THE BENEFITS GAME

ANSWERS TO QUESTIONS ON EMPLOYEE & GOVERNMENT BENEFITS FOR PEOPLE WITH HIV INFECTION

CALIFORNIA STATE AIDS LEGAL SERVICES ASSOCIATION (SALSA)

Legal Services for Persons with HIV Infection
PLAYING THE GAME

A diagnosis of HIV infection is a shattering experience for anyone. It changes your life—and it forces you to pay attention to matters you may have taken for granted or simply avoided: matters like your health, relationships, living situation, finances, and employment.

It is also a time to plan the future and to lay the groundwork for hard changes. You begin to ask questions you've never asked, such as:

■ What should I do if I'm no longer able to perform the functions of my job?
■ How can I keep my company benefits if I go on disability?
■ How can I survive without my paycheck?

Or this may be a time when you're facing other kinds of questions, like:

■ What do I do if my company switches health plans?
■ What are the insurance consequences if I begin to take AZT prophylactically?
■ Can I force my insurance company to pay for promising though experimental treatments?
■ Can an insurance company test me for HIV infection?

If you have a life-threatening illness you need to make decisions early. What you choose may determine whether you slide
down the correct chute or climb the right ladder. It is often a game of survival where the object is to claim health and income benefits to which you are entitled. This is The Benefits Game.

Before you start the game you'll need to know the rules. You'll find the rules in a number of places:

- your employee handbook,
- the plan document,
- your company insurance policy, or
- communications from your company's personnel department.

If you do not receive benefits through work, you'll learn the rules for governmental entitlements by:

- visiting the appropriate agency office,
- obtaining government publications, or simply
- contacting the social services department of your local AIDS service organization.

If you still have questions after you've read the information, bring your employee's handbook, insurance policy, and other documents when you meet with a SALSA attorney.

You are now ready to play The Benefits Game. Remember this is your game; you decide when and where to take your next move. And by knowing the answers to some frequently asked questions you will be able to slide down or climb to the right box—the place where you receive the most secure health and income protection possible.
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When you've got good health, you've got about everything." But if you're a person with HIV infection, the same is true about employer-provided benefits. When you've got good health insurance, you've got about everything.

The soaring medical costs in treating your HIV infection can financially wipe you out unless you have adequate health insurance. Since most Californians receive medical coverage through work, you will need to plan the continuation of your health benefits before you change jobs or go out on disability. Or if you are having problems with your health insurance carrier [for example, your insurer is refusing to pay valid claims or is attempting to rescind your coverage], you will need to know your options. Contact your local SALSA organization for assistance in making your move down the health chute of The Benefits Game.

1. I am beginning a new job. Do I have to complete a medical history questionnaire in order to obtain health insurance?

Maybe. A general rule of thumb: the larger the employer, the less likely a medical questionnaire. Employees of large groups typically do not have to complete medical questionnaires. They need only submit basic biographical data. Increasingly, however, employees of smaller groups have to
complete medical history questionnaires. Please note: an insurance company may later rescind an existing policy if it discovers you made a material, albeit unintentional, misrepresentation in the original medical history questionnaire. Generally health insurers do not rescind a policy for misrepresentation after two or three years from the policy's effective date.

2. If an insurance company requires detailed medical information, can the company test me for HIV infection?

In California, health insurance companies cannot require you to take an HIV antibody test or force you to disclose your antibody test results if you previously took the test. This is only true for health insurers—not for life and disability insurance carriers [see #32 & #33 below]. All three types of insurance companies, however, can consider T-cell [or CD4] subset/ratios. Additionally, insurers can, and usually do, ask detailed questions regarding any history of sexually transmitted diseases and other illnesses.

3. Can I lose my health insurance once the policy begins?

Not usually. An insurance policy is a contract: as long as the insurer receives its premiums, the policy remains in force. Nevertheless, an insurance company may refuse to pay claims or may even cancel a policy in limited circumstances. Two frequent grounds for an insurer's denial of claims:
1. You misrepresented a relevant fact in your original insurance application, or
2. You had a preexisting condition at the time of the application.

Misrepresentation on the initial medical history questionnaire need not be intentional. But a misstatement or omission to a question on the application must be significant to the insurer's medical underwriting of your policy, i.e., if the insurer had known the correct answer it would not have issued your policy in the first place. On the other hand, if the question is ambiguous with two or more interpretations, then your answer may be acceptable. Answer questions on medical history questionnaires truthfully but narrowly—that is, answer only the question asked.

An insurance company may also deny a claim up to the first three years based on an alleged preexisting condition. Your policy will define the period [no more than three years] during which time the insurance company will not cover costs for treatment of a preexisting condition. Although your insurance policy likely contains a definition of preexisting condition, that language cannot be more restrictive than the definition permitted under California law. A condition is preexisting only if:

1. it incapacitated you from carrying on normal activity or work, or
2. A general medical practitioner would be expected to have diagnosed the condition in the normal course of care.

4. I started work in September. My physician diagnosed me with AIDS in November. Can an insurance company label this a preexisting condition?

Possibly. If you had prior symptoms that a general medical practitioner would attribute solely to HIV infection, an insurance company might consider this preexisting. A positive HIV antibody status alone is not enough to constitute a preexisting condition.

Health insurers [except health maintenance organizations, or HMOs] usually include a preexisting condition clause in their policy. An insurance company may typically deny coverage for 6 or 12 months—even up to 3 years—for any condition for which you received treatment during a specified time prior to the commencement of coverage. In short, if you had definitive symptoms or received treatment during the contractually-defined period before coverage, your insurance policy probably does not cover you for an HIV-related condition during an initial period.

5. I am switching jobs. Although I am asymptomatic, my physician wants me to start AZT. If I begin AZT, will my new employer's insurance company consider this evidence of a preexisting condition?

Yes. Prophylactic use of AZT means you are receiving treatment. If you are taking AZT or other similar medication before the new coverage begins, you have a preexisting condition.
6. Can I dispute a denial of benefits if the insurance company asserts that the treatment is related to a preexisting condition?

Yes. The plan administrator—usually your employer, the insurance company itself, or another entity that your employer designates—must give you a full written explanation that specifies the exact basis for the denial. The plan administrator must also give you information on the appeal mechanism for disputing the denial of your claim.

7. Will my insurance company pay for T-cell [CD4] testing?

Maybe. Some insurance does not cover routine physical examinations or diagnostic tests unless required for treatment of a specific condition. You should also realize that an insurance company may redflag a T-cell test as an indication of HIV infection.

8. Will my insurance pay for my drugs?

If your policy does not cover prescription drugs, then your insurance company will not pay. If your policy does cover drug reimbursement, your insurer may limit payment to Food and Drug Administration-approved drugs. Some policies may further exclude FDA-approved drugs if used in a manner not related to the FDA approval. For example, the Food and Drug Administration has approved gancyclovir for CMV retinitis but not yet for CMV colitis. An insurance company may attempt to deny a claim for gancyclovir reimbursement for CMV colitis by insisting on prior...
FDA-approval of gancyclovir for the specific colitis condition. This interpretation is probably void as against public policy.

9. The only drug that holds any promise in treating my condition is experimental. Will my insurance company pay for it?
   Possibly. Many insurance companies recognize the rapid changes in treating HIV infection. Effective treatments are often available long before FDA approval. Your insurer, therefore, may reimburse for technically experimental treatments after a careful examination of credible medical research.

10. If I am insured under a small group policy, and the insurance company finds out that I have HIV infection, can the insurer drop me? Can the insurer drop the group? Can the insurer raise rates for the group?
   An insurer cannot drop you if you develop an illness. Nevertheless, an insurer:

   1. may drop the group or raise premiums at the next policy renewal period or
   2. may cancel the group policy.

   An employer cannot discharge you for incurring large medical bills, thereby raising the group premium rates. But if your company switches insurance coverage, your employer may legally drop you from the new policy unless you are presently on COBRA.
11. I am a Health Maintenance Organization [HMO] member, and I want to receive AIDS treatment by a provider not affiliated with my HMO. Can I force my HMO to pay for out-of-plan care? 

As a rule, most HMOs will not pay for out-of-plan care unless it is:

1. an urgent or emergency situation, or
2. so highly specialized that they choose not to provide it within their own network. In this instance, the HMO will pay for out-of-plan care only with the prior approval of your primary physician.

12. If I change jobs, will I have to begin a preexisting period again with my new insurance? 

Quite possibly, unless you join an HMO through the new employer. HMOs usually don't have preexisting clauses.
COBRA COVERAGE

You may be ready for a job change, but you can't afford to lose your company health benefits because you've developed symptoms of HIV infection. Or you may discover you are no longer able to work and need to go on disability. Can you keep your current health plan after you leave the job?

In some cases you may be eligible for continued health care coverage under the federal COBRA law. Check the questions and answers below to see if you can slide down the COBRA chute and continue your health insurance.

13. Can coverage under my employer's health plan continue after my employment ends?

Maybe. There is a federal law called COBRA [Consolidated Omnibus Budget Reconciliation Act of 1985] that requires employers with 20 or more employees to offer continued health care coverage of terminated employees and their eligible dependents. Only churches and employers with fewer than 20 employees are exempt from this rule. Government employees are entitled to continued health benefits under a similar statute.

14. Does it matter whether I quit, was laid off or fired?

No. Your employer must allow you to elect COBRA continuation unless your employer

1. fired you for gross misconduct, or
2. transferred you to a job that didn't offer health coverage.

You may also elect COBRA if you went on a leave or had a cutback in hours that made you ineligible for the company's group health care plan. These are all qualifying events for COBRA coverage eligibility.

15. What coverage do I get under COBRA, and what will it cost me?

You receive the same coverage as before you left work. In any companies you may switch plans once a year during open enrollment. With COBRA you can do this too, as if you were an active employee. But any changes the company [or the successor company] makes to its plans, good or bad, apply to you as well. The initial expense to you for COBRA coverage is 102 percent of the employer's cost.

16. My employer is thinking of getting rid of its group health plans. Am I protected if I'm on COBRA?

Your employer is under no legal obligation to continue your coverage under COBRA if it drops its group health plan altogether. But if the employer switches to any other group health insurance, then the new plan must allow you to join. And if your coverage continues under an extension of benefits provision [see #17 below], or if you converted from the group plan to an individual plan, the employer's cancellation of the original plan will not affect your coverage.
17. Is COBRA the only way to continue my health coverage?

No. California law requires that group health insurance policies contain a conversion option. This option allows you to "convert" your participation in the employer's plan into an individual policy. Conversion avoids evidence of insurability [see #34 & #35 below] and limits on preexisting conditions a new individual health care policy would entail. Unfortunately, premiums on converted policies are quite high and the policies may not pay many expenses. Please note, however, that self-insured company plans generally do not offer a conversion option.

California law also requires insurance policies to extend benefits if you are disabled at the time your employment terminates. The insurance company must provide at no cost to you up to 12 months of additional coverage after COBRA coverage expires or, in the alternative, after the group's coverage expires. An extension of benefits provision covers the disabling condition only. Consequently, this insurance protection covers all HIV-related claims if that is the reason for your disability.

18. Does it matter for COBRA whether I leave my job before I become technically disabled?

Yes, it matters in three very important ways:

1. When your employer's plan promises full health care coverage for the duration of your disability, you don't need
to obtain COBRA coverage. When it doesn't give you this coverage, your disability onset date could mean the difference between 29 months of COBRA coverage, or 18 months.

If you leave your job after you meet the Social Security definition of disability, then you are generally entitled to COBRA coverage for 29 months. But within the first 18 months you must obtain an award letter from the Social Security Administration in order to receive the additional 11 months of COBRA disability coverage. The Social Security award letter will contain your disability onset date.

You must notify your employer within 60 days after receiving the Social Security award letter. This extra 11-month period covers you until you become eligible for Medicare. During the latter 11-month period your employer can charge you 150 percent of its cost to cover the average active employee [102 percent is the charge for the first 18 months]. If you leave your job before you meet the Social Security definition of disability, then you may get only 18 months of COBRA coverage.

2. Many employers will continue your health care coverage for the duration of your disability, but only if your disability occurred while you were their employee. For this purpose, your employer's health plan documents will determine whether you are disabled. Thus, you might qualify for extended coverage under your employer's plan even if your disability doesn't meet Social Security's definition and even if COBRA
coverage is not otherwise available from your employer. In these situations, the cost to you is usually no greater than what you paid as an employee.

3. Other employers' health plans will continue coverage only for expenses related to a pre-termination disability, and then only for a limited time—usually 12 months. This is the extension of benefits provision described in #17 above—but it is not COBRA coverage. There is usually no cost to you for this limited coverage.

19. If I go to work for another employer will my COBRA coverage end?

Generally no. If your new employer's health plan has limits or exclusions for preexisting conditions, then you can keep your former employer's COBRA coverage until its normal expiration [18 or 29 months after you left your old job]. This is a new rule with a retroactive effective date. If your ex-employer cancelled your COBRA coverage when you got another job, you might be eligible for retroactive reinstatement of your COBRA coverage.
EMPLOYER-PROVIDED
DISABILITY INSURANCE

You may discover you're no longer able to perform the functions of your job. Or the long hours at work leave you exhausted when you return home. You review your employer-provided disability plan, but you don't know if you meet the policy's definition of disability.

Before making your next move in The Benefits Game, you need to consider a number of factors: your health, finances, and job satisfaction. It is essential to talk with your physician so she or he documents not only your medical condition but also your inability to perform the duties of your regular job. It is equally important to make requests to your employer in writing—and to save copies of all correspondence and forms.

The following questions and answers may help you decide whether to slide down the chute of disability.

20. How can I find out if my employer will continue to pay my salary if I am unable to work?

Check with your human resources department or the person who normally handles personnel and benefit issues. You should ask for a description of the employer-provided benefits. An employee handbook or a Summary Plan Description may answer many of your questions. The law requires employers with disability, pension, and health plans to provide workers with written descriptions and eligibility information.
21. What kinds of employer plans would continue to pay all or part of my salary if I am unable to work?

Generally two types of plans continue to pay you when you are unable to work: sick leave and disability. You will need to find out what your employer's rules are concerning the amount of sick leave that you get each year, the amount that you can carry over from one year to the next, and the amount of sick leave that you currently have accumulated. While on sick leave, your employer treats you as an active worker at regular pay and with the same benefits.

The other type of plan is a disability plan. Disability plans usually kick in after you have used up all your sick leave. Some disability plans—called short-term disability plans, supplemental benefit plans, wage benefit or continuation plans—give you benefits for short periods of time, say six months. Other types of disability plans—called long-term disability plans—only start to pay benefits after you have been disabled for a stated period of time. Some employers have designed their benefits so that the combination of sick leave and short-term disability cover you until you meet the eligibility of long-term disability plan benefits.

22. I don't think my employer has any type of disability plan that covers me. Doesn't the law require some kind of coverage?
The law only requires that employers provide minimal disability coverage under California State Disability Insurance [see #57 - #63 below].

23. **How much of my salary will I get under my employer-sponsored disability plans?**

There is no uniform formula for calculating disability benefits. Each plan has its own level of salary replacement. Typically a short-term disability plan provides a fairly high percentage of salary replacement while a long-term disability plan gives you considerably less.

24. **When am I considered disabled?**

Most employer-provided plans say you are disabled if you are unable to perform the duties of your regular job.

25. **Assuming I qualify as "disabled" under my employer's plan, but I am also able to perform my job, should I go on disability now or wait?**

The answer really depends on your personal situation. Since disability only provides a portion of your salary, you have to determine whether you can meet your financial obligations on a reduced income. In analyzing your future economic needs, remember that developing medical technologies may result in radical changes in the treatment and care of persons with HIV infection. In addition, there may be other types of benefits [e.g., pensions] for which you might qualify if you work longer. Finally there are "quality of life" questions only you can answer: Do you enjoy your job? Do you want to pursue other
activities like travel or volunteer work? Do you want to move closer to family or friends?

26. I can no longer perform the functions of my regular job, but my employer has offered me another job which I can perform. Do I have to take the new job?

It depends on your plan's definition of disability. Many plans have a two-part definition for disability. First, because of illness or injury, you are unable to perform the duties of your regular job, and, second, your employer is unable to find another job for you with duties you can perform. If your plan has this type of definition of disability, and your employer offers you a job you can perform, then you may have no choice but to take the job or terminate employment without benefits.

Your employer may offer you a new job you don't think you can perform. Give the new job a try—but document your own performance. If the new job is beyond your capabilities, you should again assert your right to disability. If you are taking excessive sick leave, inform your personnel representative you are unable to perform the new job duties because of your original disabling condition.

27. Do I also have to qualify for Social Security disability benefits in order to receive my employer-provided disability benefits?

Usually not, except in those relatively rare situations where an employer's plan uses Social Security eligibility as the
definition of disability. Most plans, however, do require you to apply for Social Security benefits and file an appeal if you are denied benefits.

28. My employer fired me just before my doctor diagnosed me with AIDS. What should I do?

If your employer fired you because of performance problems related to your condition, you should contact the closest SALSA office to discuss whether you have a valid handicap discrimination complaint. Even if your employer had legitimate business reasons for firing you, your plan may extend coverage until the end of the month or longer. Some plans also let you convert to individual coverage.

29. I am currently receiving disability payments from my employer's plan. Will these payments stop?

Possibly. Many plans have provisions that trigger a cessation of benefits, for example, if you work a second job and earn above a certain level while receiving disability benefits under the former employer's plan.

30. I am receiving disability benefits from my employer's plan and am also receiving Social Security benefits. My employer wants to offset part of the benefits paid from its plan with my Social Security benefits. Is this legal?

Yes. If the plan provides a Social Security offset, your employer can legally reduce the benefit it pays you. Many
plans provide an offset of one-half of the Social Security benefit.

31. I am receiving full benefits from my employer's plan which also provides a Social Security offset. After I successfully appealed an original denial of my Social Security claim, my employer is now demanding one-half of the government's back-award. Do I have to pay back my employer from this retroactive Social Security award?

Probably yes. But you may be able to reduce the payback amount by your expenses in pursuing the appeal.

32. My employer is changing disability insurance carriers. Company employees will now have to fill out new insurance applications. Can a disability insurance carrier either ask me about my HIV status or require an AIDS antibody test?

No, unless the application specifically asks whether you have been previously tested solely for the purpose of obtaining life or disability insurance.

A disability insurer can require an AIDS antibody test as part of the application process. The insurer, however, incurs all costs for this test. An insurance company can reject your application for disability coverage if you are seropositive to the AIDS antibody test.
EMPLOYER-PROVIDED LIFE INSURANCE

You may also need to protect other employer-provided benefits while you consider disability. Because you are facing a life-threatening illness, continuation of your life insurance coverage takes on heightened significance. Often this is the only major asset that passes at death to a friend, loved one or charity. Continuing your life insurance coverage is your next move in The Benefits Game.

33. I am covered by my employer's life insurance plan, and I pay the premiums for the coverage. If I have to leave my job, will I get any cash benefits from the plan?

Usually not. Most employer-sponsored life insurance plan are group term life insurance. This means that the premiums only cover the cost of life insurance coverage for a limited period of time—often only until the next paycheck.

34. I am starting a new job, and my new employer has a life insurance plan. I also recently tested positive. Will I be able to get coverage?

It depends on your new employer's plan. Many employer-sponsored group term life insurance plans do not require evidence of insurability for new employees if they elect coverage when they are first eligible. This is particularly true of plans sponsored by larger employers. Under California law, however, a life or disability insurance company can ask if you have
previously tested solely for the purpose of obtaining insurance coverage. In addition, a life insurance company can require an AIDS antibody test and then deny coverage if you test positive (see #32 above).

35. I did not elect coverage under my employer's life insurance plan when I was first eligible. In the meantime, I have tested positive. Is there any way that I can obtain coverage now?

Maybe. If you did not elect coverage when first eligible, the insurance carrier is probably going to require evidence of insurability by making you take a physical and filling out a medical history. This may result in disclosure of your HIV status and probable denial of coverage. Most group insurance plans, however, have open enrollment periods when you can sign up for coverage without evidence of insurability. In addition, if your employer's plan allows you to elect different dollar amounts of coverage, you can probably use the open enrollment period to increase the amount of coverage.

36. What happens to my employer-provided life insurance if I go on disability?

Most insurance policies have something called a waiver of premiums provision. This means that if you become disabled, your insurance coverage continues at no cost to you.
37. What happens to my insurance coverage if I have to leave my job or if my employer fires me?

You have the right to convert your insurance to individual coverage without having to provide the insurance company with evidence of insurability. Under California law you have 31 days following termination to exercise this conversion right.
EMPLOYER-PROVIDED

RETIREMENT

It may be financially difficult to make ends meet when you go on disability. A lump sum payment from your company's retirement plan would help cushion your loss of income. While you may have immediate access to some retirement plans like profit sharing or stock bonus plans, you may have to wait before you can enjoy others. The following questions and answers will help you decide whether to slide down the retirement plan chute of The Benefits Game.

38. Can I receive benefits from my employer-provided retirement plan if I become disabled?

You may have access to certain benefits if your employer maintains a retirement plan such as a pension plan, a profit sharing plan [including a 401(k) plan] or a stock bonus plan. Your rights to benefits will depend on the specific terms of your employer's plan. Federal law requires employers to provide you with a summary description of the important terms of the plan. Federal law also allows you to examine and copy all of the plan documents related to retirement plans. You may also request a statement from your employer that tells you what your benefits would be if you worked until normal retirement age [usually 65] and if your rights under the plan are vested [i.e., nonforfeitable].
39. Does my employer's retirement plan automatically cover me?

Depends. Your employer's plan may require that you be at least 21 years old and that you complete a full year of employment before you can participate in a plan. Your employer's plan may also exclude part-time employees or employees who are members of a union.

40. If my employer's retirement plan does cover me, what conditions do I have to meet in order to receive benefits?

After you begin participation in a retirement plan you begin accruing benefits. Under many plans, such benefits become nonforfeitable, or vested, as you work over a certain length of time. You may become vested in a certain percentage of your benefits after each year that you work for your employer, with full vesting at the end of a certain number of years of service [e.g., 7 years]. Other plans provide full vesting upon an employee's completion of a certain number of years of service [e.g., 5 years]. Your employer's plan may also provide that your benefits become fully vested if you become disabled or if you die. Once your benefits are nonforfeitable, you have a right to receive those benefits when you reach normal retirement age or earlier.
41. **How do I determine whether my benefits have vested?**

Most plans use *years of service* for determining when your benefits vest. Your plan may calculate years of service by using the actual hours worked during a year or by using some alternative formula. A plan may further require a minimum number of hours to constitute a year of service.

42. **When may I receive benefit payments from my employer's retirement plan?**

Retirement plans generally come in two forms: defined benefit plans and defined contribution plans. **Defined benefit plans** [i.e., pension plans] pay a predetermined amount of benefits upon retirement after an employee attains normal retirement age. Usually a pension plan will not make payments to your estate or to your beneficiaries if you die, although payments generally continue after death to a legal spouse. Your plan, however, may have an early retirement age that would allow payments to begin earlier than normal retirement date. Your plan may also allow you to receive payments if you retire due to a disability.

**Defined contribution plans** [e.g., profit sharing plans and stock bonus plans] typically allow easier access to retirement benefits than a defined benefit plan. Some of these defined contribution plans allow you to withdraw your benefits after a certain number of years of participation. A defined contribution
plan may also include a salary deferral plan, often called a 401(k) plan. A 401(k) plan may allow you to withdraw your contributions upon attaining age 59-1/2, retirement, death, disability or separation from employment. A 401(k) plan may also allow distributions in cases of financial hardship caused by threatened foreclosure on a home mortgage, eviction, tuition or medical expenses.

43. **Do I have a right to receive any benefits from my retirement plan if I become disabled before reaching normal retirement age?**

Not unless your employer plan provides for the payment of benefits upon your becoming disabled.

44. **What is a 403(b) plan?**

If you work for a tax exempt organization, your employer may sponsor a 403(b) plan, or a tax sheltered annuity plan. After you elect to reduce your salary for an annuity purchase, your employer purchases annuity contracts on your behalf. You do not pay taxes on the amount until you receive payments from the annuity contract.

45. **Will I have to pay income taxes on payments from my employer's retirement plan?**

Yes, except for certain amounts on which you paid tax in the year you made the contribution. Moreover, if you receive a distribution before you attain age 59-1/2, there is a 10% penalty tax in addition to income tax on such distribution. The 10% penalty does not apply if you are disabled or if you
terminate your employment after attaining age 55. If you receive your entire benefits in a lump sum, you may be able to use five-year averaging to reduce income tax.

46. What happens to my benefits under my employer's retirement plan if I file for bankruptcy?

If you file for bankruptcy, you have a choice of either Federal or California exemptions. Federal bankruptcy law allows you to exempt future benefit payments to the extent necessary to support yourself and any dependents. In contrast, California bankruptcy law allows you to receive retirement plan payments regardless of need.
GOVERNMENT
INCOME BENEFITS

If you are disabled because of a severe HIV condition, you may qualify for income benefits under a government-sponsored program.

The federal Social Security Administration administers two separate but related disability benefit programs. The first of these programs, Social Security Disability Insurance [SSDI] or Title II, is essentially an insurance program available to disabled claimants who have paid into Social Security during their working years. The other program, Supplemental Security Income [SSI] or Title 16, is a needs-based program that provides benefits for all disabled people regardless of whether they have paid Social Security taxes. Please check with your local Social Security Administration office to obtain detailed information and pamphlets on both SSDI and SSI. Finally, the State of California Employment Development Department administers the California State Disability Insurance [SDI] Program. This program provides a portion of your salary for short-term absences from work due to a non-work-related accident or illness.

Persons with a disabling HIV condition need to know what government benefits are available. If you do not have employer-provided benefits, you need to slide down the right government income chute. Or if your company benefits have run out, you will need to climb the ladder to the appropriate
government income program. Take your next move in The Benefits Game.


First of all, you must be disabled. The Social Security Administration defines disability as any medical condition [physical or mental] that prevents or is expected to prevent you from working for 12 or more months, or will result in death. This definition generally includes individuals with a Centers for Disease Control AIDS diagnosis.

The Social Security Administration, however, evaluates individuals with other stages of HIV infection on a case-by-case basis. If you have a disabling HIV condition but lack an AIDS diagnosis, you will need to work with your physician to document your disability claim carefully. It is not enough to show you are unable to perform the duties of the job for which you have trained. You must be unable to perform any job. This means that if you are no longer able to perform your job as an astronaut, but you are physically able to work as a ticket-taker, you are not disabled under the Social Security Administration definition of disability.

Second, in addition to being disabled, you must show that:

1. You have paid into the Social Security system to qualify for SSDI [see #49 below] or
2. You have a financial need based on limited resources to qualify for SSI [see #52 below].

48. How do I apply for SSDI or SSI?

Call the toll free 800 number [1-800-234-5772] to make an appointment. Or walk into any Social Security Administration office and file an SSDI or SSI application.
SOCIAL SECURITY DISABILITY INSURANCE

SSDI

49. How do I know whether I am eligible for SSDI?

To be eligible for SSDI, you must have paid into the Social Security system during 5 of the last 10 years before you became disabled. In other words, your employer had to have withheld Social Security taxes [FICA] from your paycheck. If self-employed, you needed to make direct quarterly payments to Social Security.

50. When should I apply for SSDI?

As soon as you become disabled. Though SSDI benefits are payable no earlier than 5 months after disability, you should not wait to file. If the Social Security Administration determines you became disabled before the time you applied, you may be entitled to past due benefits up to 12 months.

51. How much are SSDI benefits?

The amount of your benefits depends on several factors, including amount of earnings, age at onset of disability, and date of disability.
SUPPLEMENTAL SECURITY INCOME

SSI

52. How do I qualify for Supplemental Security Income [SSI]?

If you are disabled and have limited resources, you may be eligible for SSI payments if:

1. Your assets do not exceed $2000 for an individual;
2. Your earned and unearned monthly income is below approximately $650;
3. You live in any house you own; and
4. Your automobile, if you own one, is worth no more than $4500 unless you use the car for medical purposes, work, or essential daily activities.

53. When should I apply for SSI?

Immediately after you become disabled. SSI benefits are retroactive to the date of application. General processing time for an SSI application is one to three months. Although the Social Security Administration will initially presume you are disabled if you have an AIDS diagnosis, the agency must receive your medical records within three months in order to make a final determination of disability.

54. How much are SSI benefits?

A number of factors will determine what you receive. Generally, if you have no other income, have access to cooking
facilities, and live in California, you will receive SSI benefits at approximately $630 a month [as of June 1990].

55. Can I receive both SSDI and SSI benefits?

Yes, in some instances. If you received low wages during your working years, SSI payments may supplement your SSDI benefits. Please note, however: all SSI income and resource limitations still apply.

56. Can I return to work and still retain my SSDI or SSI benefits?

Yes, under certain conditions. You may decide you want to return to work, but you are uncertain whether you can handle a full time job. Both SSDI and SSI programs offer incentives so you can test your ability to work without losing your benefits. SSDI offers a 9-month trial work period while SSI allows you to work indefinitely (but SSI still applies its resource limitations [see #53 above]). Since restrictions apply, check with your local Social Security Administration office for details, or obtain a copy of its brochure on work incentives [#64-030].
57. How do I qualify for SDI?

SDI provides short-term benefits after you are absent from work for more than 7 calendar days due to a non-work-related accident or illness. You must have worked for an employer that paid into the SDI program, or if self-employed, you must have elected to participate in the state program. In addition, your physician must certify that you are suffering from an illness or injury, either physical or mental, that prevents you from doing your regular or customary work. Please note: SDI's definition of disability is less restrictive than the Social Security Administration's definition [see #47 above].

58. When am I eligible for SDI benefits?

Generally you are eligible for SDI payments after you are out of work for 7 days. But if you were hospitalized, you are eligible after one day. SDI may also pay you for the seven-day waiting period if your disability exceeds 21 days.

59. How much are SDI benefits?

Depending on your wages and SDI premiums during a 12-month base period, the amount of your benefits payment will range from $50 to $266 per week [as of June 1990].

60. What if I have accumulated sick leave?
Your accumulated sick pay can be used to supplement your SDI so that the total amount you receive equals your regular paycheck.

61. What if I have assets or other income?
Assets and other sources of income, regardless of amount, do not affect SDI eligibility.

62. How long do SDI benefits last?
The maximum amount of SDI benefits is 52 times the weekly rate but no more than your total base period wages. You receive a check twice a month.

63. How do I apply for SDI?
Mail a completed claim form to a local California Employment Development Department office no later than the 41st day after the first day for which benefits are payable. Fill out everything on the form except the medical practitioner's section. Your health care provider will need to certify your disability.
OTHER GOVERNMENT INCOME BENEFITS

64. I have no employer-sponsored benefits and I am not eligible for SSDI, SSI, or SDI. Are there other government assistance programs available?

Yes. You may be eligible for General Assistance [GA] or Food Stamps through your county welfare department. Though eligibility requirements differ from county to county, each welfare department requires that:

1. You have limited income and assets, and
2. You reside in the county.

65. I am a U.S. veteran. Are there any additional services available to me?

Yes. If you are a United States veteran who left the service with other than a dishonorable discharge, you may be eligible for the following: a pension for non-services-connected disabilities, compensation for service-connected disabilities, vocational rehabilitation, free medical and dental care, and free burial. Check with your VA Regional Office for details, or obtain a copy of the Government Printing Office booklet Federal Benefits for Veterans and Dependents.
GOVERNMENT

HEALTH CARE BENEFITS

If you don't have full health care coverage under a company plan or a policy you purchased on your own, you may be eligible for government health care benefits. In order to qualify for one of these programs, you must be blind, aged, disabled, or a member of a family with dependent children.

The first government-sponsored health insurance program is Medicare. Administered by the Social Security Administration, Medicare consists of two types of coverage, Hospital Insurance [often referred to as Part A] and Medical Insurance [Part B].

1. **Hospital Insurance** pays in-patient hospital care, skilled nursing facility care, home health and hospice care after you meet deductibles.

2. **Medical Insurance** pays 80% of approved doctor services, out-patient hospital services, home health visits and other medical services after you meet deductibles. You need to pay a small monthly surcharge in order to receive Medical Insurance coverage.

A second government-sponsored health insurance program is Medicaid. California's version of the Medicaid program is Medi-Cal. Medi-Cal is a state-administered program funded jointly by the state and federal governments that pays health care expenses for low income persons. Under this plan the State
of California pays health care providers directly for their services.

Your last move in The Benefits Game is learning whether you qualify for health care coverage under a government program. Once you slide down the chute into one of these health programs, the government—and not you—is paying most of your health care costs.
66. How long do I have to wait for Medicare benefits?

Generally there is a 29-month waiting period [5 months before you receive SSDI payments plus 24 months before you are eligible for Medicare]. Despite this lengthy period before you receive benefits, you should nevertheless apply for Medicare benefits at your local Social Security office as soon as you become disabled.

67. What if I have other employer-sponsored health insurance?

It is important to determine if your health insurance coverage will be the primary health insurance plan—that is, the plan that pays first for any covered health care services you receive. In most cases, your employer-sponsored health plan will be the primary plan. Medicare then becomes the secondary plan that pays some of the expenses your employer plan does not pay. Whether you need Medicare Part B depends on how fully the employer plan covers your medical services. Remember there is a monthly cost for you to receive Part B [approximately $34 a month as of June 1990].

68. What do I do about filing claims if I have employer-plan coverage?

You should give the hospital, doctor, or any other supplier of covered services the necessary information [e.g.,
your name and policy numbers]. Direct the health care provider to bill the employer plan first. If the employer plan does not pay in full for services Medicare covers, enclose a copy of the explanation of benefits with your claim to Medicare for secondary benefits.

69. I am a health maintenance organization [HMO] member and later become eligible for Medicare.

How do I file claims?

Inform your HMO billing department about your Medicare eligibility. At a minimum HMOs with Medicare contracts must offer all Medicare-covered services. Medicare pays your HMO a monthly amount for the cost of Medicare-covered services less any applicable deductibles and co-payments.
MEDI-CAL

70. How do I qualify for Medi-Cal?

If you receive AFDC, SSI, or Refugee Cash Assistance, you are automatically eligible for Medi-Cal. If you have limited resources, but you are not eligible for one of these programs, you may still be eligible. Most people with AIDS qualify because they are disabled. On the other hand, Medi-Cal considers people with AIDS-related conditions [ARC] on a case-by-case basis. Because Medi-Cal's review of your disabling condition is similar but not identical to the Social Security Administration's decision-making process, you should apply for Medi-Cal separately if you do not have an AIDS diagnosis. In addition, you must also meet SSI's resource limitations in order to receive Medi-Cal coverage.

71. How much of my medical costs will I have to pay?

How much does Medi-Cal pay?

Medi-Cal decides your share of costs [i.e., the part of your medical expenses you must pay] based on your income. You make arrangements to pay your share of costs first, then Medi-Cal pays its portion.
72. **What services are available through Medi-Cal?**

Medi-Cal covers office visits to a doctor or dentist, hospital and nursing home care, laboratory and x-ray services, mental health services, prescriptions and medications, eyeglasses, hearing aids, physician-prescribed medical supplies and equipment, and chiropractic services. Some limitations apply. Please note: many of these services require the health care provider to obtain prior Medi-Cal authorization for payment.

73. **Will Medi-Cal pay any of my medical expenses before my Medi-Cal coverage began?**

Possibly. You may be eligible for retroactive coverage for three months prior to the month you applied for Medi-Cal. But Medi-Cal will not reimburse you directly. Find out if your health care provider will bill the Medi-Cal program for past services and then refund your money upon receipt of payment.

74. **What if I am eligible for both Medi-Cal and Medicare?**

If you have a disabling HIV condition, you must apply for Medicare in order to qualify for Medi-Cal. While Medicare remains the primary payment source, Medi-Cal pays deductibles, co-payments and your Medicare Part B premium.

75. **Do I have a choice of Medi-Cal health benefits?**

Yes. You can choose either the monthly Medi-Cal sticker program or a Medi-Cal prepaid plan. Under the sticker
program you locate your own doctor whenever you need care. Under the prepaid plan you receive all your services from a single predetermined health plan.
WINNING THE GAME

By climbing up ladders and sliding down chutes you can win *The Benefits Game*. You can secure maximum health care and income protection simply by making timely and informed choices regarding your benefits. Though the process may be agonizing and the consequences extreme, you don't have to play the game by yourself. Contact your local SALSA organization to help you win *The Benefits Game*.
Where can I go for more help?
If you need more help dealing with your legal problems, contact the AIDS legal service closest to you.

FRESNO AND CENTRAL VALLEY
Central Valley AIDS Team
606 East Belmont
Fresno, CA 93701
(209) 264-2437

LOS ANGELES
Hospice/AIDS Project
Los Angeles County Bar
P.O. Box 55020
Los Angeles, CA 90055
(213) 622-8840

LA Gay & Lesbian Community Services Center
1213 North Highland Avenue
Los Angeles, CA 90038
(213) 464-7400

ORANGE COUNTY
AIDS Legal Panel
c/o Duran & Loquvam
709 South Anaheim Boulevard
Anaheim, CA 92805
(714) 533-9399

RIVERSIDE COUNTY
Desert AIDS Project Legal Services
750 South Vella Road
Palm Springs, CA 92264
(619) 323-2118

SACRAMENTO AND NORTHERN CALIFORNIA
Sacramento AIDS Legal Referral Panel
Voluntary Legal Services Program of Northern California
515 12th Street
Sacramento, CA 95814
800-468-8890
916-444-6760

SAN DIEGO
AIDS Legal Services Project
1305 Seventh Avenue, Suite 100
San Diego, CA 92101
(619) 238-8100

San Diego AIDS Project Legal Clinic
3777 4th Avenue
San Diego, CA 92103
(619) 543-0300

SAN FRANCISCO BAY AREA
AIDS Legal Referral Panel
114 Sansome Street, Suite 1103
San Francisco, CA 94104
(415) 291-5454

SAN JOAQUIN
San Joaquin AIDS Foundation
4410 N. Pershing Avenue, CS
Stockton, CA 95207
(209) 476-8533

SANTA CLARA COUNTY
AIDS Legal Services
480 North 1st Street, Suite 214
San Jose, CA 95112
(408) 293-3135

SANTA CRUZ
AIDS Legal Panel
Santa Cruz AIDS Project
1606 Soquel Avenue
Santa Cruz, CA 95062
(408) 427-3900

SOLANO
Solano County AIDS Legal Services Project
c/o Solano County Legal Assistance
930 Marin Street
Vallejo, CA 94590
(707) 643-0054