

**GENERAL INFORMATION REGARDING YOUR CLAIM FOR SOCIAL SECURITY DISABILITY (DIB) AND/OR
SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS**

1. ARE YOU DISABLED?

To receive benefits under the Social Security Disability or SSI programs, you must have physical or mental health problems (or a combination of problems) severe enough to keep you from working in any regular, paying job for at least 12 months. The test isn't whether or not you are able to go back to your old job; and the **test isn't** whether or not you will be hired at another job. Rather, the **test is** whether you are capable of doing jobs available in the national economy. By using an extensive set of regulations the Social Security Administration will take into account your medical condition, your age, your abilities, training and work experience in deciding your case. The regulations require that the following questions be answered in order. If a decision accepting or denying the claim can be made at any question, the remaining questions will not be decided. The questions are:

- a. Have you worked on a sustained basis since the date of your alleged disability and earned in excess of \$1000 per month (under current regulations for 2011 and 2010; the amount in 2008 was \$980, 2008 was \$940; in 2007 it was \$900)?
- b. Do you have a medical condition that prevents some basic work related activity (a severe impairment)?
- c. Do you have a condition that meets or equals the requirements of one of the conditions listed in the Listing of impairments?
- d. Are you able to perform any of your past relevant work, either as you performed the job or as it is generally performed in the national economy (whichever is less demanding)?
- e. Are you capable of any other jobs that exist in significant numbers in our region or in several other regions of the country that pay \$1000 (under the present regulations for 2011 and 2010) per month or more?

2. DIFFERENCES BETWEEN DIB AND SSI BENEFITS

Both programs have the same definition of disability. However, to qualify for DIB benefits, you must also have insured status. Insured status is obtained by working and paying Social Security (FICA) taxes. Generally, to have insured status you must have worked paid in sufficient amounts of FICA taxes to have 20 quarters of coverage during the 40 quarters before you became disabled. If you are under 31, you need to have ½ of the number of quarters of coverage that have passed between age 21 and the time you became disabled. These benefits are payable after the five (5) month waiting period established by the Social Security Act. Moreover, benefits may not be paid more than one (1) year before the date of your application.

SSI benefits are payable to disabled individuals who meet the indigency requirements of the law. The indigency rules have specific guidelines as to the income and resources that an individual may have before the person is disqualified for benefits. These benefits are first payable as of the month after the month the individual has applied for such benefits, so long as the individual establishes that he/she was disabled in the month in which he/she applied.

3. STEPS INVOLVED IN THE CLAIMS PROCESS.

The first step of the claims process is filing your initial claim. A claim can be filed by:

- Going to the District Office closest to you and completing the necessary paperwork;
- Going online to www.ssa.gov and completing the necessary forms;
- Calling the Social Security Administration at 1-800-772-1213 and scheduling an appointment for an interview to review and complete the necessary paperwork.

If your claim is denied on an initial application, you may request that the evidence be reviewed by filing a Request for Reconsideration. This request must be filed within 60 days of the day you receive your Denial **Notice**. It will be presumed, unless there is convincing evidence to the contrary, that you have received the initial denial notice within five (5) days of the date it was mailed to you.

If you are denied benefits at Reconsideration, you may file a request for hearing if you want further review of your claim. The Request for Hearing must be requested within 60 days of the date you receive the Notice of Reconsideration. Again, it will be presumed, unless there is convincing evidence to the contrary, that you have received the Notice of Reconsideration within five (5) days of the date it was mailed to you.

The hearing process will be discussed more fully below. Historically, benefits have been awarded in a little more than 60% of all claims that proceed to a hearing, with **claimants who are represented receiving favorable decisions more frequently than unrepresented claimants**.

Should your claim be denied as a result of your hearing you may request that the Appeals Council review the evidence considered by the Administrative Law Judge (ALJ) to determine if the ALJ's decision was unreasonable or rendered by the use of an incorrect legal standard.

Further review of your claim may be obtained in the Federal Courts. As before the Appeals Council, the court can only reverse or remand your claim if the earlier decision was unreasonable or rendered by the use of an incorrect legal standard.

If you have previously been found disabled your claim is subject to review under the Continuing Disability Review (CDR) process. If the Social Security Administration terminates your entitlement to benefits you have the right to pursue the same steps in appealing this decision as if your claim was initially denied.

4. WHAT IS A HEARING?

The hearing is the crucial step of the appeal process. You have the best chance of having your claim accepted at this level. The hearing is called an "administrative hearing."

The Office of Disability Adjudication and Review (ODAR) of the Social Security Administration conducts the Hearing. This is not the same department of the Administration that denied your Initial Application and your Request for Reconsideration. A completely new and independent review of the evidence in your case will be made.

The presiding officer in charge of the Hearing is the Administrative Law Judge (ALJ). Although testimony before the ALJ is taken under oath, the Hearing is generally informal. Strict rules of evidence do not apply. The evidence the ALJ is required to consider in reaching an independent, unbiased decision consists of medical records and other documents and testimony at the hearing.

The Judge and your attorney, if you have one, will question you about your disability. Because all testimony is recorded, it is necessary that you speak as clearly as you can when you answer questions.

The hearing is private and is usually held in a small conference room. The only people present will be the Judge, the Judge's assistant, you, your attorney (if you have one), and any witnesses you may want to be present. Sometimes the Judge may ask a "vocational expert" and a "medical advisor" to testify about your ability to work.

Most Social Security hearings take 45 minutes to 1½ hours. Few hearings take more than 2 hours.

If your condition causes you difficulties during the hearing, don't be embarrassed. The Judges are used to and will accommodate problems that may arise. If you are more comfortable standing than sitting, you will be allowed to stand. Or you may shift positions frequently. If you need to take a break during the hearing, all you need to do is ask.

5. TESTIMONY AT THE HEARING.

The purpose of your testimony at the hearing is to supplement and corroborate the medical records and reports that are a part of the hearing file in your case. Although adequate medical evidence forms the foundation of a successful case, your testimony is crucially important to show how your medical condition limits your ability to do jobs available in the national economy in light of your age, education and training, and work experience. The Administrative Law Judge will evaluate your answers to questions in several areas, including those described in the next several paragraphs. The precise questions you will need to answer will depend on the nature of your disability.

6. AREAS OF QUESTIONING AT A HEARING

MEDICAL CONDITION

You will be asked how your medical condition makes you feel. In other words, you will describe the symptoms you experience such as pain, dizziness, numbness, nausea or paralysis, as precisely as you can. For example, if your case involves pain you might be asked where it is, how much pain you have and how often, what kind of pain you have -- is it burning, stabbing, crushing, sharp, throbbing, radiating or aching pain? Does the pain limit your range of motion? Does the pain interfere with your ability to concentrate? What do you do to relieve the pain? What medication do you take for pain? How well does the medication work? Are there any side effects from the pain medication?

MEDICAL HISTORY

You may be asked how often you see your doctor, what sort of treatment your doctor provides, what medications you are presently taking, how often you take each medication and whether there are any side effects. You may also be asked to describe the symptoms and treatment of your medical condition since its onset. Although you may be asked what your doctor has told you about your impairment, you will not be expected to testify about the technical medical aspects of your condition or the results of medical tests.

PHYSICAL ABILITIES

You will be asked to tell how far you can walk before resting, how long you can sit at one time and stand at one time, the total length of time you can sit and stand during an eight-hour day; how much you can lift constantly, frequently, or occasionally; whether you can use your hands for repetitive actions such as simple grasping, pushing and pulling of arm controls and for fine manipulation; whether you can use your feet for repetitive movements such as pushing and pulling of leg controls, whether you can twist, bend, squat, crawl, climb and reach. You may also be asked whether you have other restrictions on activities caused by allergies, dizziness, drowsiness or special sensitivity to marked changes in temperature and humidity.

MENTAL ABILITIES

If your case involves a mental disability, you will be asked about your ability to understand, carry out and remember instructions, to make judgments, to respond appropriately to supervision, co-workers and usual work situations, and how well you deal with changes in a routine work setting.

EDUCATION AND TRAINING

You will be asked how far you went in school, whether you have had any training in the military, whether you have had any formal vocational training, and whether you have had any on-the-job training. You will be asked to describe any vocational training you have had.

WORK EXPERIENCE

You will be asked to describe job duties on your last job and on significant jobs you have had during the past 15 years. The Judge will want to know what percentage of time you spent sitting, standing and walking and how much weight you had to lift on each former job. The Judge will assess the level of skill required to do your former jobs. You will be asked why you left each former job.

DAILY ACTIVITIES

To assess the limitations caused by your disability in your daily life, you will be asked questions about your daily activities -- how you spend your time from getting up in the morning until going to bed at night. You will be asked how well you usually sleep; whether you take naps during the day; whether your appetite is good; what things you do around the house, such as cooking, housework, repairs or gardening; whether you do shopping; whether you drive a car; what hobbies you have now.

You may also be asked how your daily routine changes since you became disabled. For example, what hobbies did you have before you became disabled which you are now unable to do?

7. WHAT AN ATTORNEY DOES TO REPRESENT YOU IN YOUR CASE

Every case is different. Your attorney's role depends on the particular facts of your case. However, a few of the things an attorney may do are:

- Gather medical and other evidence.
- Analyze your case under Social Security Regulations.
- Contact your doctor and explain Social Security Regulations to obtain a report consistent with those regulations.
- Refer you to additional doctors (usually specialists) for further medical reports to answer questions raised by Social Security Regulations.
- Send you to a vocational expert for a report on your ability to work.
- Suggest that the Social Security Administration send you to a doctor for a consultative examination.
- Obtain documents from your Social Security file.
- Review actions taken by the Social Security Administration.
- Ask that a prior application for benefits be reopened.
- Seek waiver of a time limit.
- Request subpoenas to insure the presence of crucial witnesses or documents at your hearing.
- Advise you how best to prepare yourself to testify at your hearing.
- Protect your right to a fair hearing by objecting to improper evidence and procedures.
- Submit written questions to physicians who have examined you at the request of the Social Security Administration.
- Cross-examine adverse witnesses at your hearing.

- Present a closing statement at your hearing arguing that you are entitled to benefits under Social Security Regulations.
- Submit a written summary of the evidence and argument to the Administrative Law Judge.
- Review, suggest changes or make legal objections to written questions that are sometimes sent to a doctor by the Administrative Law Judge after a hearing requesting an additional medical opinion.
- If you win, make sure that the Social Security Administration correctly calculates your benefits.
- If you lose, request review of the Hearing Decision by the Social Security Administration Appeals Council.
- If necessary, represent you in a federal court review of your case.

8. WHAT YOU CAN DO TO PREPARE FOR YOUR HEARING

- A. KEEP A DIARY.** For the next two (2) weeks keep a daily diary which details everything you do from the time you get up in the morning until you go to bed at night. Record how well you sleep, how many times you wake up during the night. Write out a description of your pain. Describe in detail how you feel at various times during the day and any steps you take to accommodate your disability such as naps, rest periods, what you do to relieve pain or discomfort, and requests for assistance from relatives and friends. Note all medications taken. Describe everything you do during the day. The details are very important.

Judges understand that you do not have to be bedridden to be disabled. Claimants who go through the exercise of keeping a daily diary are able to give a much more detailed description of their usual day than those who do not keep a diary. A detailed, concrete description of your daily life given in testimony before the Judge often can dramatically demonstrate the seriousness of your disability and corroborate your testimony about your medical symptoms.

- B. MAKE A LIST OF THINGS YOU USED TO DO BUT CAN NO LONGER DO.** If you think about it for a few minutes, you will realize that there is a long list of hobbies, sports or spare time activities you used to do but no longer are able to do because of your disability. It is important for you to think carefully about these things so that you can testify about them effectively at your hearing. It helps to make notes about your former activities to discuss with me.
- C. MAKE A LIST OF MEDICATIONS.** Most Judges will request that you submit before the hearing a list of medications you are currently taking. Even if the Judge does not request such a list, you should prepare one. Include on the list the condition for which you are taking the medication, the name of the prescribing doctor, the size of the dosage you take, how often you take the medication and a description of any side effects. For medications marked "PRN" or "take as needed", you can use your diary to record how often you take the medication.

It will help me if you make a list of medications you have taken for your condition in the past but which you are no longer taking. Such a list may show medication changes that are characteristic of the progress of certain medical conditions or it may demonstrate the difficulty your doctor has had in controlling your medical condition.

- D. WRITE OUT A DESCRIPTION OF YOUR JOB DUTIES ON YOUR FORMER JOBS.** Writing out your job duties helps organize your description of your former jobs. The Administrative Law Judge must know just what your former jobs required to determine why, with your disability, you no longer can do them.

- E. MEETING WITH YOUR ATTORNEY.** The most important meeting with your attorney is when you go over your testimony. If I am representing you, we will do this just before your hearing, however, **you should send me your diary, your lists and your job descriptions at least 2 weeks before your hearing.**

The purpose of the diary, the lists and the job descriptions is to help you prepare for your testimony. These items will not ordinarily be introduced into evidence or referred to by you during your testimony.

If you believe there is a friend or relative who can testify at the hearing about the limitations in your daily life caused by your disability please let me know right away. We can then decide about bringing this witness to the hearing or having the witness provide me written information that can be used as evidence in your claim.

Every case is different. No general advice for testimony can cover all situations. Specific problems with your case, the best way for you to approach testifying, whether to use other witnesses and who to use will necessarily have to be worked out between us.

However, **the following general rules may be helpful:**

1. Tell the truth.
2. Neither exaggerate nor minimize your medical symptoms.
3. Know your present abilities and limitations.
4. Provide relevant details and concrete examples -- but don't ramble on.
5. Don't worry. If you are represented by an attorney, it is your attorney's job to help you if you forget something or you don't bring out the necessary details.

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