

TIPS When Appealing A Social Security Disability or Supplemental Security Income Benefit

Obtaining a disability benefit from the **Social Security Administration (SSA)** can be a long process. Most people are not approved with the application and must appeal, often several times. The following information will help you know what to expect with your case and how to move through the stages.

Think of it as a 3-step process:

Stage 1 **Application** 90 -120 days for a decision. About 20% are approved.

Stage 2 First appeal called **Reconsideration**. 90-120 days for a decision.
About 20% are approved.

Stage 3 Second appeal is called **Request for Hearing by An Administrative Law Judge**
Can take 10-14 months for a hearing to be scheduled with a judge.
About 50-70% of cases are approved.

When to appeal, if necessary?

Appeal when your denial letter is called:

- Notice of Disapproved Claim – this would occur after your Application
- Notice of Reconsideration – this would occur after your Request for Reconsideration

It is to your advantage to appeal. You **MUST** appeal **within 60 days** of the date on the denial notice. You are given a 5-day grace period. Beyond that you must have “good cause” for a late filing which requires good documentation of your reason. Otherwise, you will have to re-apply.

How to Appeal?

To appeal you may return to your online application using the PIN number provided when you applied. Or, call the toll free number 1-800-772-1213 and you will be sent the proper forms to include the: “Disability Report-Appeal”.

If your application and your request for reconsideration are denied you should appeal again to request a hearing. Once again, file this appeal within 60 days. **It is very important for you to get an advocate to help you.** This is called “representation”. Attorneys and non-attorneys provide representation. Find a representative right away as it will take many months to prepare your case.

What can I do to improve my case?

- Review each denial notice carefully. See if any of the doctors or other treatment records you told them to collect are missing. Be sure to state this on the appeal and provide the information again.
- Keep going to the doctors that treat your disabilities. It is best to see a doctor who specializes in the treatment of your diagnosis rather than a primary care doctor. You should schedule follow up appointments so they can document your ongoing symptoms and limitations. Attend all appointments and follow your doctor's advice including taking medications or going to therapy as prescribed. If you miss an appointment, reschedule it.
- If you lack medical insurance apply immediately for free health care offered by many hospitals and community clinics.
- Complete all forms by the deadlines.
- Make sure all information submitted repeats the same information. For example, don't say in one form "I walk one-half mile every day" and the next form: "I can only walk one block occasionally". If this happens to be true because your condition is worsening than say so.
- Prepare a list of the ways your condition affects you such as pain, fatigue, dizziness, shortness of breath, anxiety, depression, poor concentration or memory loss. Update it often. Bring the list to your doctors each time you visit and discuss ways your condition has gotten worse. Leave a copy of the list with your doctor for your file.
- Find an advocate or **representative** immediately after the second denial.

What does the representative do?

- A representative is an advocate. They will take time to review your file and get to know you and your disabilities. Some will ask you to provide an electronic copy of your SSA file on CD.
- They will ask you how your disabilities prevent you from working.
- They will collect your records and other important information throughout the entire waiting period as long as you keep them informed of who is treating you.
- They will submit all new evidence including opinions they collect from your doctors.
- They will prepare an argument on your behalf based on why you meet the SSA definition of disability. Often, they prepare a letter to the judge to present this argument.
- They will prepare you and any witnesses for the hearing.
- They will keep you informed every step of the way before, during, and after the hearing.

What Should I look for when hiring a representative?

- Find an individual or firm that specializes in social security disability law.
- Find an individual or firm that is local so they are familiar with the judges in your community and so you have easier access to them when you need them.
- Find someone who agrees to stay in touch with you throughout the process and agrees to take your calls when you have a question or new information.
- Ask around for a recommendation.

Can I get a copy of my file?

You are allowed one (1) free copy of your electronic file as long as you are requesting it for program purposes. Some SSA offices vary in how they respond to these requests. Explain you need your entire file on a CD to prepare for your case. To get the CD, go to an SSA office and ask for it to be copied as you wait. You may also call the hearing office once you have filed your Request for Hearing. Or, you can write or call and ask for a copy, but that may take much longer. *However, do not miss the 60-day time limit for filing an appeal.*

What does it cost to hire a representative?

- You should pay nothing upfront unless the representative requires you to cover the cost of collecting your records.
- You only pay your representative IF your case is approved. At this time, your representative may collect 25% of your past-due benefits NOT to exceed \$6000. You will sign a "Fee Agreement" agreeing to this.
- Most representatives will be paid this fee directly out of your past-due benefit. If not, they will collect from you. Be sure to ask how this will take place.

What if I am denied by a judge?

There are two more stages to the process. The first is called "Request for Review". This appeal is submitted to the Appeals Council. Ask your representative to appeal. This appeal can take over a year, sometimes longer.

The **Appeals Council** can:

- Approve your case, or
- Deny your request for review, or
- Send it back to the judge for another hearing and a new decision which may or may not be favorable.

Very few cases are approved by the Appeals Council. Once again, it is not recommended that you appeal on your own.

The last and final stage on any claim is **Federal District Court**. This requires an attorney. Non-attorneys cannot take cases at this level unless they represent with an attorney. These cases can take several years to resolve. In the unlikely case this appeal is approved your attorney is entitled to collect 25% of all the past-due benefits. This level may require a new fee agreement.

Can I Re-Apply?

Yes, you can re-apply. However, if your new claim is approved, past-due benefits cannot cover any time prior to the date of the judge's decision. A new SSDI claim, if approved, will require a 5-month waiting period whereas an SSI claim will be paid from the day you apply forward.

What if I am not satisfied with my representative?

Sometimes people become dissatisfied with their representative. Perhaps, they are not returning your calls or they don't appear to be doing anything. You do have a right to change representatives. Be careful when you do this. Here are some things to keep in mind:

- These cases move slowly and that is often outside of your representatives control.
- Your representative must agree to state in writing that they are withdrawing from your case. They must send a copy to you and SSA.
- Your representative may agree to "waive" their right to the fee if your case is approved. If so, they should put this in the letter to SSA so a new representative knows they will not have to share the fee.

How can I find a representative?

The **disAbility Law Center of Virginia (dLCV)** provides representation for a small number of cases each year. You may call the office on Monday, Wednesday, or Friday to discuss this with an advocate on duty. You may also use the list of referrals provided by the Social Security Administration's Office of Disability Adjudication and Review when you file the "Request For Hearing By An Administrative Law Judge". It is important to find someone who specializes in social security disability and who you can meet with in person. You may also use the following sources to obtain referrals in your community:

National Organization of Social Security Claimants Representatives
Lawyer Referral Service
www.nosscr.org 800-431-2804

National Association of Disability Representatives
Non-Lawyer Referral Service
www.nadr.org 800-747-6131

Virginia Lawyer Referral Service
<http://www.vsb.org/vlrs/index.php/public/vlrs/>
800-552-7977

disAbility Law Center of Virginia
1512 Willow Lawn Drive, Suite 100, Richmond, VA 23235
(804) 225-2042 (local and TTY) (800) 552-3962 (statewide)
www.dLCV.org or for publications go to: www.dLCV.org/publication/