

# Eight MISTAKES

to **Avoid** When Filing for  
Social Security Disability Benefits



HENSLEY LEGAL GROUP, PC

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Social Security Disability Benefits

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WORD ASSOCIATION PUBLISHERS

[www.wordassociation.com](http://www.wordassociation.com)

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# **This Book Does Not** Represent Legal Advice

Although we understand the disability process and we are offering tips and suggestions, neither the authors nor the publisher offer the information as legal advice. Every case is unique. The advice and strategies we suggest may not be suitable or appropriate for your situation. We can only offer legal advice regarding your specific case once you have signed a written agreement for representation with our office.

It is possible that an individual reading this book may be currently represented by another disability attorney. Please do not let the information in this book interfere in any way with your current representation. We do not intend for you to change representatives. In fact, please do not ask us to take your case away from another attorney because we will not do that.

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# Introduction

## Why You Need this Book

Thank you for requesting a copy of this book. It is our sincere hope that it will give you a greater understanding of the complicated process involved in obtaining Social Security disability benefits.

If you have applied for disability benefits, you probably have a lot of questions. Many people are only vaguely aware that Social Security disability exists; fewer still know how to go about getting the benefits they deserve. Based on our experience in representing disability claimants, we hope to answer many of your questions and set you on the path to receiving the benefits you need. We will also warn you of the potential pitfalls that exist for any disability claimant. Unfortunately, it is all too easy to make mistakes that could jeopardize your disability claim. Many of these mistakes cannot be undone which is why the information in this book is so important.

We believe that everyone should have the tools they need to fight for the benefits they deserve. Our goal is to help people. Even if you do not hire us to represent you, we want to help you increase your chances of getting approved for Social Security disability benefits.

As you read this book, you will probably encounter some terms that you have not heard before, or perhaps you heard them in conversations with Social Security representatives, but you did not understand them. To help you make sense of some of the most common terms, we offer a glossary at the back of the book. If you are new to this process or have been confused by terminology in the past, please feel free to review the glossary first.

After reading this book, you may have additional questions, or feel the need for a personal consultation. Please feel free to call us toll-free at 1-888-HENSLEY. It will not cost you anything to call and ask questions, nor will we charge you to meet with us. You can also visit our website at [www.hirehensley.com](http://www.hirehensley.com) for more information about Hensley Legal Group, PC.

# Preface

## Two Scenarios

Every year, thousands of disabled Americans file for Social Security disability benefits. Unfortunately, the majority of these claims are rejected. Most people are unfamiliar with the process of obtaining disability benefits. Many deserving people are prevented from acquiring their benefits simply because they do not know how the system works. Read the following hypothetical scenarios and think if anything sounds familiar.

### Scenario #1

*Joe is a middle-aged factory worker who has been suffering with diabetes and back pain for several years. After struggling to keep up with the demands of his job, Joe finally decides that he just can't work anymore. He resigns from his job and on the recommendation of his doctor, he decides to file an application for Social Security disability benefits.*

*Joe's application sits at the Social Security office for several months while they make their decision. He gets a letter in the mail telling him that his application for benefits was denied. The letter says that the government agrees that Joe can't go back to his factory job, but they think he could do a lighter duty job instead. Joe gets discouraged*



*and doesn't realize that he has the right to appeal Social Security's decision. He sets the letter aside and gives up on getting disability.*

*A few years later, Joe is involved in an accident and his back pain becomes significantly worse. He has not worked since he resigned from his factory job. Thinking that he may qualify for disability benefits now that his condition has worsened, Joe files another application. Social Security tells him that he has waited too long and his work credits have expired. Joe contacts an attorney and finds out that if he had appealed the denial on his original application for benefits, he may have been approved. But now it's too late and Joe may no longer be eligible.*

## Scenario #2

*Sally is a young woman struggling with bipolar disorder and anxiety. She has never been able to hold down a job due to her medical condition. She doesn't have any income and is struggling to support her children. She can barely afford to feed her family, let alone pay to see a psychiatrist. She applies for Social Security disability because her mental health problems keep her from working.*

*After she files her claim for benefits, the Social Security Administration asks Sally to see their psychiatrist. Knowing that she cannot afford to see her own doctor, Sally complies with the government's request. The exam is brief, and Sally leaves feeling like the doctor didn't do much. A few weeks later, Sally gets a letter in the mail telling her that*

*she does not qualify for Social Security benefits. The government thinks she is capable of keeping a job.*

*Sally appeals Social Security's denial of her claim and ultimately appears before a judge. She has not hired an attorney to represent her because she doesn't think she can afford one. She goes to the hearing alone and tells the judge why she can't work. But the judge notices that Sally has never seen a mental health professional regarding her condition. The only doctor's report in the file is from the Social Security doctor who thinks that Sally can work. Sally's testimony at the hearing isn't persuasive enough to convince the judge, and she does not have an attorney to advocate for her. The judge denies her claim because there was no medical evidence to support her allegations.*

If either Joe or Sally had contacted our office before filing the claim, or even after the first time the claim was denied by Social Security, we could have helped. We would have told Joe about the limitations on work credits, and we would have told Sally that she could have an attorney represent her without any up-front expenses on her part. Our attorneys only take a fee if you win your case. Both of these cases represent commonly-held misconceptions and common strategic errors. After reading this book, you will be equipped with the knowledge to avoid these mistakes, and many more.

# Chapter One

## **What is Social Security Disability?**

The Social Security Administration pays monthly benefits to people who cannot work due to a permanent physical or mental impairment. When the Social Security Act was first enacted in 1935, the program offered retirement benefits to elderly workers but had no provisions for the disabled. By 1956, Social Security laws were changed to allow cash benefits to be paid to disabled adult workers. Eventually, Social Security began making payments to the disabled, both young and old, regardless of their age or work history. Today millions of Americans receive monthly Social Security disability checks.

According to the Social Security Administration, studies show that a 20-year-old worker has a three in ten chance of becoming disabled before reaching retirement age. That's a scary thought. Most people don't plan for the possibility of not being able to work. Sometimes, Social Security benefits are a disabled person's sole source of income. Social Security benefits are a blessing for those who cannot work, but it is frequently an uphill battle to obtain them.

The Social Security Administration defines disability as the inability to engage in any substantial gainful activity because of a medically determinable physical and/or mental impairment. The impairment must have lasted or be expected to last for a continuous period of at least 12 months, or be expected to result in death. This is a very strict definition of disability. In most situations, you must have a *permanent* physical or mental impairment that prevents you from returning to your past work, and also prevents you from performing any other work. The Social Security Administration does not pay disability benefits to those with a temporary disability lasting fewer than 12 months, nor does the government pay benefits for a partial disability that does not stop a person from working.

## Types of Disability Benefits

There are several types of disability benefits, but they all fall under two main categories: *Disability Insurance Benefits* or *Supplemental Security Income*. The medical requirements for each program are the same and both types of applications go through the same medical decision-making process. However, the financial requirements for the two programs are very different.

### Disability Insurance Benefits

Disability Insurance Benefits (DIB) is the disability program for those people who have been employed sufficiently long to acquire insured status. When you pay Social Security taxes on your earnings it's like paying a premium on an insurance policy. If you pay enough into the system, you become insured for disability benefits.

Through your employment, you earn what Social Security calls “quarters of coverage” or “work credits.” For each year you work, you can earn up to four quarters. The amount needed to earn a quarter changes every year. The number of quarters needed to become insured for benefits is dependent upon your age.

When you are no longer employed, you also stop contributing to Social Security. Eventually your coverage will lapse after you stop working. Generally, a person needs to have been employed for at least five out of the last ten years to be insured for benefits. So not only is it important that you have worked a sufficient number of years, but it is also important that your work is recent enough for your quarters to count.

The amount an individual receives from DIB depends on how much that person earned while working. Social Security uses a very complicated formula taking into consideration an individual’s earnings over his or her lifetime. The more money a person earned while working, the greater the monthly benefit.

## Supplemental Security Income

Supplemental Security Income (SSI) is quite a bit different than DIB in terms of financial requirements. SSI is a needs-based program. To qualify for SSI, you must meet certain income and asset limitations. You cannot have too much money in the bank, or too much household income. However, unlike DIB, you can qualify for SSI without ever having held a job.

The amount an individual receives from SSI depends on his or her financial situation. The maximum amount payable to an SSI recipient (which changes each year), may be reduced if there is other household income. SSI payments often fluctuate depending on household income. It's possible that a spouse's income could put a claimant over the income limit to receive SSI, meaning that some people who meet the medical criteria for disability benefits do not qualify financially for SSI. If you meet the medical qualifications for SSI benefits, Social Security will tell you how to report your income and assets to determine your financial eligibility.

## Determining Medical Disability

Social Security has developed a very detailed procedure for determining whether a person meets their medical disability requirements. Not everyone who applies for benefits will meet these criteria. Social Security's decision-makers go through a rigorous evaluation taking into consideration not only a person's medical condition, but also his age, education, and work skills.

### The Sequential Evaluation

Social Security uses a five step process to determine whether a person meets their definition of disability. Social Security calls this their "sequential evaluation."

**Step one:** The work activity test. Social Security will first look at whether you are currently working and how much you are earning. There is a limit to how much you can earn and still qualify (the limit changes each year). That limit, called “substantial gainful activity” (SGA), is a monthly dollar amount in gross income. If you are working and earning over the limit, it is likely that your application will be denied immediately without any consideration for your medical condition.

**Step two:** Determining if you have a medically determinable “severe” impairment.

By severe, Social Security means that your medical condition must severely limit your ability to do basic work activities, such as walking, sitting, or remembering. Your condition must be expected to be severe for at least one year. If your condition is not severe, or if it is not expected to last at least a year, the claim will be denied. If your condition does meet the severity requirements, Social Security will then move on to step three.

**Step three:** Deciding whether your condition meets one of the conditions in the *Listing of Impairments*. Social Security keeps a *Listing of Impairments* (also called the “Listings”) that includes medical conditions that are so severe they automatically mean that you should be deemed disabled. The Listings contain not only the list of diagnoses, but also the medical and laboratory findings that must accompany the diagnosis of the impairment. If your condition satisfies the requirements of a listed impairment, you will be deemed disabled. If your condition does not appear in the Listings, Social Security

will determine whether the severity of your impairment is equivalent to the severity of one of the listed impairments. The Listings are very strict, and very few claimants satisfy the criteria of a Listing. If your condition does not meet or equal a Listing, your claim moves on to step four.

**Step four:** Determining whether you can perform your past relevant work (PRW), or in other words, work you performed during the previous 5 years. If Social Security decides that you can perform a past job, your claim will be denied. If they determine that your condition is so severe that it prevents you from returning to your past relevant work, you move on to the fifth and final step.

**Step five:** Deciding whether there are any other jobs that exist in the economy that you can perform despite your impairments. Social Security must take into consideration your age, education, and work skills when deciding what jobs you may be able to do. They may ask for the opinion of a vocational expert regarding possible jobs that a person with your limitations could perform. If there is other work you can do, you will not be deemed disabled. If there are no jobs that you can perform, your claim will be approved.

## Documenting Your Claim

As Social Security is deciding whether you meet their medical criteria, they will also require other documentation to support your claim. In addition to your personal, verbal,



or written testimony about your disability, they will also require medical evidence and written statements from your friends and family to help them make their decision.

The most important documents are your medical records. To qualify for benefits, your medical condition must be documented by clinical or laboratory reports. Your medical records must convince Social Security that your condition is severe enough to cause the limitations that you allege. Social Security likes to see objective findings in your medical records (such as MRIs or x-ray results). Therefore, it is extremely important that you obtain regular medical treatment.

Other sources of information used to determine your eligibility include statements by yourself, family, and friends. Generally, these statements are collected through questionnaires called “function reports.” Social Security often sends function reports to both claimants and third parties (such as a close friend and/or family member) for completion. Function reports ask questions about your normal daily activities; they want to know which activities you can still perform and those that you cannot perform because of your impairment.

It’s important that you have a close third party contact available to complete a function report for Social Security. Most people don’t realize how important these forms can be to the outcome of your case. If Social Security asks you for the name of a person who can provide a statement about your disability, be sure to provide the name of someone who either lives with you or who sees you everyday. If Social Security sends a report

for you to fill out yourself, be sure to fill it out completely, including details about your condition. Do not exaggerate your limitations, but at the same time don't hesitate to be specific and comprehensive about reporting your limitations. If you do not complete the forms at Social Security's request, you can expect to receive a denial letter for not cooperating with their evaluation.

Finally, one important source of information used to determine your eligibility for benefits is your own verbal testimony. If you are required to attend a hearing, a judge will ask you to testify about your medical condition. This is your opportunity to let Social Security know the impact that your condition has on your life. Your testimony not only will provide the judge with details on things you can and cannot do, it also provides the judge with an opportunity to evaluate your credibility.

# Chapter Two

## The Application and Appeal Process

There are several steps that most claimants must go through before being approved for disability. Not everyone is approved after the initial application. In fact, most claims are denied twice before they are ultimately approved. Regardless of whether you are applying for Disability Insurance Benefits, Supplemental Security Income, or both, you will likely have to go through the following steps.

### The Initial Application

The first step in obtaining disability is to file the application for benefits. There are three ways an application can be filed.

1. You can make an appointment to visit your local Social Security office to file the application in person.
2. If you are unable to file the application in person, you can make an appointment to file your application over the phone.
3. You can file online using Social Security's website: [www.ssa.gov](http://www.ssa.gov).

When filing your application for benefits, you will be asked to provide quite a bit of information, including details on your diagnoses, your doctors, medications, and past work. If you call to make an appointment to file your application for benefits, Social Security should tell you exactly what documents and information they expect you to have on hand when you arrive for the appointment. Generally, they ask for the names and addresses of all of the doctors you have seen within the last year. You will need to provide a list of your medications including the name of the doctor who prescribed the medication. You will also want to refresh your memory on your last 5 years of employment history. Social Security will ask you for your dates of employment at each job, as well as the job title, job description, and rate of pay for each job.

After the application is filed, Social Security will send your file to the Disability Determination Bureau (DDB). The DDB is the state agency that is responsible for evaluating the medical eligibility of all disability claimants. When your file reaches the DDB, it will be assigned a case worker, also known as an adjudicator. Your adjudicator will request records from the doctors you listed on your application. He or she may also send forms to you and your family members to complete regarding your daily activities. If the adjudicator needs additional medical information to fully evaluate your claim, he or she will schedule a consultative exam (CE), which is a medical evaluation with an independent doctor. Sometimes CEs will include a physical or psychological evaluation, or perhaps testing such as blood work, breathing tests, or even x-rays. You do not have to pay for the exam or any tests; the government is responsible for covering these costs.

When all of your medical evidence has been collected, the adjudicator will ask for an opinion from another doctor; a doctor who has never examined you. This doctor will only review the written evidence; therefore, it is very important that Social Security is aware of all the doctors you have seen, that you complete all the paperwork they send you, and attend all the required exams. If the medical evidence is strong enough, the doctor may recommend that your case be approved. If that should happen, you will receive a notice in the mail telling you how much your benefits will be and when your first check will arrive. However, there is a good chance that the doctor who reviews your file will tell Social Security that your functional limitations aren't severe enough to prevent you from working. If that happens, the DDB will send your file back to your local office where they will issue a denial letter.

As you can see, there are a lot of steps involved in submitting an application for benefits. On top of that, Social Security offices are currently overwhelmed with a large number of applications. So, how long does all of this take? Typically, it takes anywhere from six to eight months for Social Security to make a decision on an initial application. However, we have seen claims linger for much longer than this depending on the situation.

# Request for Reconsideration

If you receive a denial letter, you shouldn't get discouraged. Many people have been in this same situation. The best way to change Social Security's mind about your case is to file an appeal. It is important to fight Social Security's decision and not give up.

Filing an appeal is different from filing a new application. An appeal tells Social Security that you disagree with their decision and that you want them to take another look at your claim. Many people have to file more than one appeal, but the statistics show that a large percentage of people who follow through with the appeal process ultimately end up getting approved. Starting over with a new application, on the other hand, is like going back to square one. The odds are always going to be against you if you keep starting over from scratch.

If your initial application is denied, your denial letter should tell you that you have the opportunity to file an appeal. Timing is critical. *You only have 60 days after receiving the letter in which to file your appeal* (Social Security assumes that you received your letter five days after it was mailed, so the deadline is the 65<sup>th</sup> day after the date on the letter). The first appeal is called a Request for Reconsideration. The appeal must be made in writing, which can be done online at Social Security's website.

Regardless of how you file your appeal, it is vital that you have proof that your appeal was filed before the deadline passed. Social Security offices are very busy and it is easy

for paperwork to get lost. We have seen people wait months and months for a decision on their appeal only to find out that Social Security lost their appeal papers. This is one reason why it is a good idea to hire an attorney to handle your appeals for you. Your attorney will be responsible for making sure your appeals are filed on time and that they don't get lost in the shuffle.

When your Request for Reconsideration is filed, you will provide Social Security with an update on your medical condition by filing a form called a Disability Report Appeal. This form allows you to give the names and addresses of any doctors you have seen since your original application was filed. It also gives you the chance to tell Social Security about any new illnesses or injuries you have. Upon filing your Request for Reconsideration, Social Security will send your file back to the DDB. Your case will be assigned to a different adjudicator who will request records from any additional doctors you may have listed on your Disability Report Appeal form. Your file will then go through the same process it went through during the initial stage.

You may be asked to attend another medical exam and you will probably be asked to complete updated forms regarding your daily activities. Your file will be reviewed by a doctor who will offer an opinion. Chances are good that the doctor will agree with the decision made during the initial application stage. If the doctor disagrees with the initial decision, you will receive a letter telling you about your benefits. Otherwise, you will receive a denial letter that looks very similar to the one you received after the initial application.

Current statistics show that, in many states, about 90% of Reconsideration requests are denied. It typically takes the DDB anywhere from three to five months to issue a Reconsideration decision, but your denial letter could come sooner if you are not receiving medical treatment. If your Request for Reconsideration is denied, don't get discouraged; you will have the opportunity to file a second appeal, called a Request for Hearing.

## Request for Hearing

By filing a Request for Hearing, you are asking Social Security to reevaluate your case by scheduling a hearing with an administrative law judge (ALJ). The requirements for filing this appeal are the same as those for filing the Reconsideration appeal. The appeal must be received by Social Security within 65 days of the date on your denial letter. As with the Reconsideration request, you can file this appeal online if you have access to the internet (or you can visit the Social Security office if you do not). Again, it is vital that you have written verification that your appeal was filed before the deadline in case Social Security happens to lose your appeal paperwork.

It's a good idea to have an attorney involved at the Request for Hearing stage for a couple of reasons. First of all, having an attorney take care of your appeal paperwork is convenient. Additionally, many judges hesitate to hold hearings for unrepresented



claimants. Often, when a claimant goes to a hearing without an attorney, the judge may suggest that the hearing be postponed to give the claimant time to hire a representative.

When you request a hearing, your local Social Security office will send your file to the hearings office, also known as the Office of Hearings Operations (OHO). When your file reaches OHO, it is essentially placed at the bottom of a huge stack of files to wait its turn for a hearing date. Most hearings offices are overwhelmed with claims. Dozens of local offices pour their appeals into just a few hearings offices within the state. Due to financial constraints within the government, most OHOs have not been able to hire the staff needed to keep up with an ever-increasing workload. This has resulted in huge delays at OHOs across the country. Some OHOs can schedule hearings within a few months, but, depending on where you live, it's possible that you may have to wait two years or longer for your hearing date.

When your turn comes up for a hearing, you will be asked to appear before an administrative law judge (ALJ). At the hearing, the ALJ will listen to your testimony, and he or she may ask for an opinion from a medical or vocational expert. The hearing is your opportunity to explain in your own words why you cannot work. You will be asked a number of questions, either by the ALJ or by your representative. The questions are not meant to test you or put you on the spot. The hearing serves as a fact-finding mission, so the judge may ask questions about what you do on a normal day, what your symptoms are like, or if you have any hobbies. It's important to be honest with the judge. Don't be afraid to talk about problems you have doing normal, everyday

things—there is no reason to be embarrassed about anything. It's important to leave your pride at the door and talk about all of the problems you are going through because of your disability.

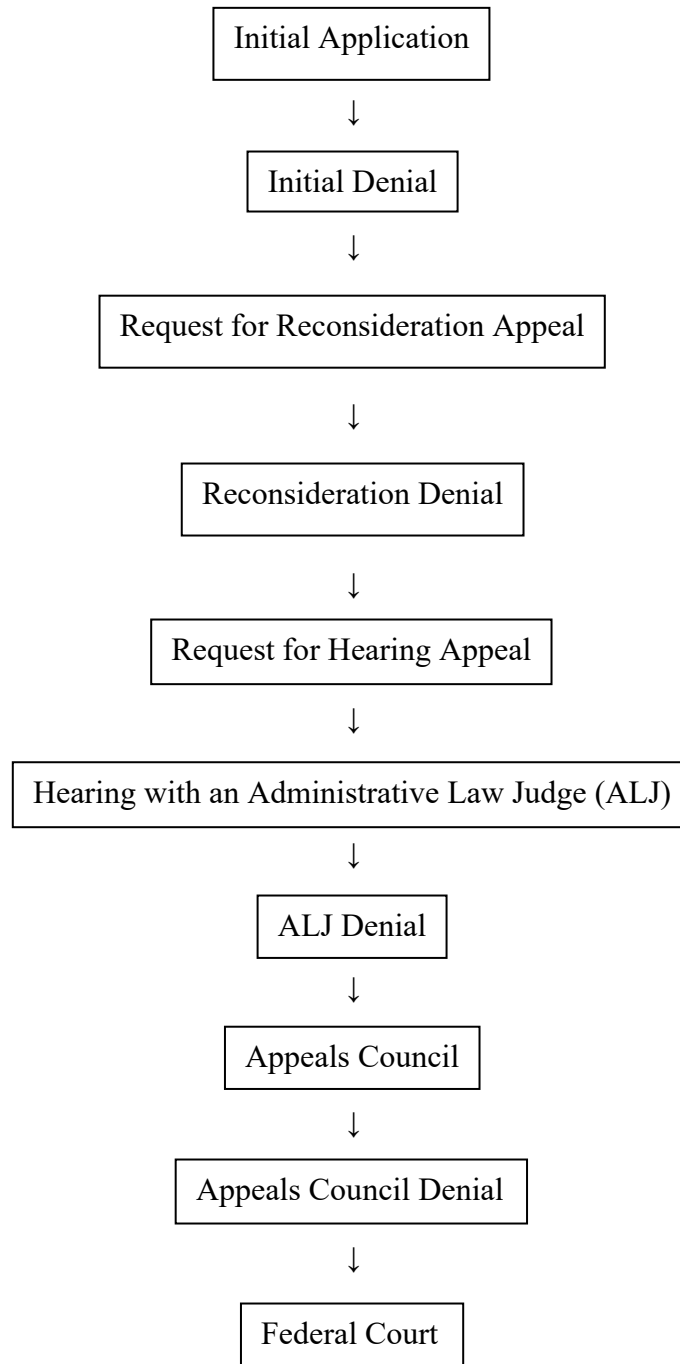
After listening to your testimony and reviewing the medical records, the ALJ will issue a written decision, usually within 60 to 90 days after the hearing. If the ALJ approves your claim, it will take about 60 days for your local office or payment center to contact you about your benefits. If the judge denies your claim, there is yet another appeal that can be filed.

## The Appeals Council and Federal Court

When an ALJ denies a claim, there are two options. You can file a new application for benefits, or you can file an appeal with the Social Security Appeals Council (AC). Both options have their advantages and disadvantages. Every case is unique and sometimes one option is better than the other given the specifics of the case.

By filing an appeal with the AC, you will ask a panel of judges in Virginia to take another look at the claim. The job of these judges is to determine whether your ALJ made a mistake that needs to be reviewed or possibly overturned. The AC may decide that another hearing is necessary, in which case your file is likely to be returned to the same judge that made the original decision. If the AC denies your appeal, you then have the opportunity to file a lawsuit against Social Security in federal court.

# THE SSD APPLICATION AND APPEALS PROCESS



# Chapter Three

## **Eight Mistakes You Must Avoid When Applying for Disability Benefits**

Most Social Security disability claims are denied. It's not that the government is heartless and wants people to suffer. In fact, it's the opposite. Social Security is a system created to help people in need. However, the government has to be rigorous in evaluating claims; otherwise, undeserving people would be draining the system's resources. This makes it difficult to get disability benefits, and consequently, you must be very careful to avoid the pitfalls and traps that could cause your worthy claim to be denied.

### **Mistake #1 Failing to Get Medical Treatment**

Most attorneys will tell you that your medical records are the most important evidence in your disability case. Your medical records contain the information Social Security must see before your claim can be approved. Many people underestimate the importance of medical treatment. We see so many clients who do not visit a doctor for

one reason or another. Social Security is not going to take your claim seriously until you take your medical condition seriously. That means going to regular doctor appointments, undergoing appropriate testing, taking your medications as prescribed, and even seeing specialists when necessary.

## What If I Can't Pay for Treatment?

Before going into the reasons why medical treatment is so important, it should be noted that many people who are unable to work cannot afford regular medical treatment. This is probably the biggest reason why some clients never see a doctor. However, many people don't realize that there are treatment options even for those without health insurance.

In many states, including Indiana, it is possible to be approved for Medicaid health insurance based on a disability. Medicaid has financial restrictions, much like SSI does (limits on your income and assets), and the medical disability requirements are similar to those imposed by Social Security. However, the process for obtaining Medicaid is generally less burdensome and less time consuming. We see many clients get approved for Medicaid long before their Social Security claims are approved. With Medicaid, individuals can get regular medical treatment which in turn strengthens their Social Security claim.

If you do not qualify for Medicaid, there are also free and low-cost medical clinics that may be able to help you. Many clinics charge for services based on a sliding scale tied to your household income, meaning they will only charge what you can afford. Our office keeps a list of free and low-cost medical clinics which we provide to those clients who cannot obtain insurance.

Even with Medicaid or treatment through a free clinic, you may find it hard to pay for doctor visits and medications. Keep in mind that if you do not have medical evidence to support your case, it may ultimately result in your claim being denied leaving you without an income—now and in the future.

## Why Are My Medical Records So Important?

You may be wondering why your medical records are so important. The quick answer is because Social Security requires that you provide medical documentation to support your claims. If you are telling Social Security that you cannot work because your back hurts, they will want to see an x-ray or MRI showing that there is something wrong with your back to reasonably account for the pain. Believe it or not, there are people who try to scam the system and claim disability even though there is nothing wrong with them. Social Security has to weed these people out. That's why they cannot simply take your word for the fact that you have pain; you have to provide the medical documentation to prove it. Many valid claims are denied because there is no objective evidence to support the claimant's allegations, but this can be avoided if you take your medical treatment seriously.

Now that you know why medical treatment is so important, you should also know that treatment is not always as simple as visiting your family doctor for a yearly physical. There are several aspects of your medical records that Social Security will focus on. The main points include: the frequency and nature of your visits, the types of doctors you see, and how well you comply with your doctors' orders.

## How Frequently Should I See My Doctor?

Generally, the more often you see the doctor the better it is for your disability case. However, if you are going to the doctor but not telling him or her about all of your medical conditions, all of these visits could have no bearing on your case at all. This is not to say that you should go into your doctor and complain of every ache and pain at every visit, but don't be afraid to tell your doctor what is really going on. If you are having pain, be sure to describe it using details about where the pain is located, how severe it is, and how it is affecting your daily activities. If you are suffering from anxiety, tell the doctor how often you have anxiety attacks, how long they last, and what they feel like. Make sure your doctor takes notes and documents your complaints.

There is no set-in-stone answer to how frequently you should go to the doctor. Everyone's medical condition is unique and requires different treatment. You should see the doctor as frequently as your doctor recommends. But if your doctor tells you to come back in a year, and your symptoms require more frequent attention, be sure to schedule additional visits to have your complaints addressed. It is probably a good idea to see at least one of your doctors every month. This will allow the medical evidence to

accumulate, and it also communicates to Social Security that your symptoms are severe enough to warrant frequent visits to a medical provider.

## Should I Keep a Journal?

Some medical conditions, such as migraines or seizures, can be documented by the patient. It doesn't make sense to go to the emergency room after every seizure or for every migraine, especially when money is tight. In these situations, it is usually a good idea to keep a journal to document the frequency and severity of the events. These journals can be given to Social Security as medical evidence for your case.

When keeping a journal, it is a good idea to write down all of the details of the event. For example, if you suffer from a seizure disorder, you should document each seizure by notating the date, and the time of day, the seizure occurred. Sometimes it's easier for a friend or family member who witnessed the seizure to do this. You should also describe the event itself (describe what others witnessed or how it felt) and write down how long it lasted. In addition, it's a good idea to keep a record of how you felt after the seizure (maybe you had a headache or felt nauseous) and how long it took to feel normal again. The same can be done for a variety of impairments, such as headaches, dizzy spells, or anxiety attacks.



## Should I See a Medical Specialist?

The type of doctor you see can also be very important. In many cases, the family doctor is the one who knows the most about the patient's overall medical condition. However, it is usually important to see a specialist in addition to your family doctor. Specialists generally take more detailed notes specific to the impairment, and they typically order more objective testing and suggest additional treatment options. Treatment with a specialist also communicates to Social Security that your condition is severe and that you are pursuing all available options. Most family doctors will offer a referral to the appropriate specialist, but if your family doctor doesn't suggest that you see a specialist, don't be afraid to ask for a referral.

If you are alleging disability due to a psychological impairment, treatment with a psychiatrist or psychologist is, in our opinion, vital. Perhaps your primary disability is a physical condition, but you are also suffering from depression as a result of your inability to work. Under those circumstances, seeing a mental health provider can be crucial to your case. If your family doctor has prescribed an anti-depressant, Social Security will likely acknowledge that you have depression, but they are not likely to treat it as a severe impairment. On the other hand, if your medication is prescribed by a psychiatrist and if you receive counseling or therapy, Social Security will be more likely to thoroughly assess the impact of your mental condition on your ability to work.

If you get more thorough treatment, Social Security will do a more in-depth investigation. And oftentimes, a mental impairment combined with a physical disability

will be what tips the scales in your favor. If you receive treatment for a mental condition through your family doctor, you should consider receiving specialized mental health treatment.

## How Critical Is It to Comply with My Doctors' Orders?

Believe it or not, many people do not follow their doctors' advice. There's no point in going to the doctor every month if you are not going to do what the doctor says.

Compliance is a huge issue in disability cases and by not following your doctors' orders, you can seriously damage your credibility.

Doctors are trained professionals and they are not going to tell you to do something unless there is a good reason. So, if your doctor suggests physical therapy, you should give it a try. If he suggests going to a neurosurgeon, you should take his advice. If she tells you that it is important to lose weight or stop smoking, you should make a valid effort to follow through with her suggestions.

Sometimes a doctor will suggest a treatment that you may be reluctant to follow through with, such as major surgery. If surgery is recommended, ask about the risks and benefits. Ask your doctor what the chances of improvement are after the surgery. If the chances of improvement are not high, or if there are too many risks involved, Social Security should not hold it against you if you decide not to have the surgery. However, you must make sure that the reasons for not having the surgery are documented in your records.

Attend all of your scheduled doctor visits. We hate to see the words “no show” in the records. You may have had a valid reason for not showing up to your doctor’s appointment—perhaps your car broke down. But if you don’t call your doctor and explain why you didn’t show up, Social Security will never know what happened. And if Social Security thinks that you don’t consider your appointments important, they will assume that your medical condition really isn’t that bad. For example, if you are discharged from physical therapy because you didn’t show up for your appointments, you are practically begging Social Security to say that you must not have anything wrong with you. Judges have a way of finding every missed appointment in a file and if the judge wants to deny your case, using noncompliance is an easy way for him to justify turning you down.

## Mistake #2

### Failing to Take your Prescribed Medication or Failing to Report Medication Side Effects to Your Doctor

It is as important to take your medications as it is to attend your doctors’ appointments. Medication is usually prescribed to alleviate a symptom and your symptoms, such as pain, are generally what prevent you from working. When Social Security sees that a claimant is not taking medication as prescribed, it sends up a red flag. It’s easy for Social Security to say that if you took your medication as prescribed, then your symptoms would improve and you would be able to work. Don’t give Social Security an easy excuse to deny your case by failing to take your medication as prescribed.

## What if I Stop Taking My Medications Because of Unpleasant Side Effects?

Sometimes a person doesn't take a medication because its side effects are worse than the condition it is treating. Tell your doctor. Medication side effects can range from minor complaints of fatigue or headache to serious complications such as a stroke.

Many people experience side effects from their medication. The side effects may not be severe enough to warrant stopping the medicine, but they can have an adverse impact on your daily life. Social Security will pay attention to your complaints about medication side effects if they are well documented. Prescription narcotics, for example, generally cause drowsiness and difficulty with attention or focusing. Therefore, people on narcotic pain medication are usually instructed not to drive after taking the medicine. Some medications that are not as notorious for side effects may affect you in a similar way. Social Security will never know how your medication affects you unless you tell your doctor and make sure he documents it in your records. Be sure to be specific about any side effects you are experiencing and tell your doctor how they are affecting your daily activities.

## Mistake #3 Using Illegal Drugs or Abusing Alcohol or Tobacco

Your credibility, or believability, can be a determining factor in whether you win or lose your disability case. Therefore, it is important to avoid doing anything that could harm

your credibility. Using illegal drugs, misusing prescription drugs, or abusing alcohol or tobacco are all good ways to damage your credibility.

Several years ago, Social Security imposed a law stating that a person could not receive disability benefits based on drug addiction or alcoholism. This doesn't mean that drug addicts and alcoholics cannot get disability, but it does mean that if your drug addiction or alcohol abuse is the reason you cannot work or get a job, you will not be approved for benefits.

Determining how drug addiction or alcohol abuse affects a person's ability to work is a difficult thing. Even if your substance abuse has no bearing on your medical condition, Social Security could see it as damaging to your credibility and deny your case. You want to present yourself to Social Security in the best possible light, so it is imperative that you stay away from drugs and alcohol.

Using tobacco, smoking specifically, is another way to seriously damage your credibility. This is especially true in cases where people are alleging disability due to breathing or heart problems. We see so many claims for people who cannot work because of emphysema and difficulty breathing; yet so many of these people continue to smoke. Many judges will find a way to deny these cases, no matter how severe the impairment is.

## Mistake #4 Waiting Too Long To Apply For Benefits

Deciding to file an application for disability benefits can be tough. Many people don't want to admit that they can no longer work, whereas others delay filing for benefits because they hope that their situation will improve. Still others don't even realize that filing for disability benefits is an option.

The law limits how far back Social Security will pay retroactive disability benefits, which means that it is very important to file for benefits as soon as your disability prevents you from working. For people entitled to Disability Insurance Benefits (DIB), the law only allows retroactive benefits to be paid for one year prior to the application date. This means that if you become disabled but wait longer than a year to apply for benefits, you will not be entitled to all of your back pay. For those who apply for SSI, the law only allows benefits to be paid starting with the first month after the month in which you apply. For every month you wait to file for SSI, you are losing benefits.

In addition to filing to protect the benefits to which you are entitled, you should also consider the effect that waiting may have on your work credits. Your work credits expire within a few years after you stop working. In order to qualify for DIB, you must prove that you became disabled before your work credits expired. The longer you wait to file for benefits, the more difficult this becomes. It is much more difficult to obtain evidence that proves your disability started five years ago than it is to get evidence showing your disability started five months ago.

Even if you think that you may not qualify for benefits, it won't hurt to talk to Social Security about filing an application. There is no reason to delay filing your claim.

## Mistake #5 Not Appealing a Denial or Waiting Too Long to Appeal

Many people make the mistake of not appealing the decision that denied their claim.

Some of them get discouraged and give up, whereas others get frustrated and don't think about filing an appeal until it's too late. These can be very costly mistakes.

Statistics show that most people are not approved for benefits until their case is heard by a judge—which only happens on the *second* appeal. That means most people have to file at least two appeals before they are approved for benefits. Many people don't realize that they have the option to appeal, or, if they know about the appeal process, they don't know that there is a strict deadline for when the appeal can be filed.

Most appeals must be filed within 65 days of the date on the most recent denial letter. Social Security is very strict about their deadlines and will only accept a late appeal if you have a very, very good reason. Appeals must be made in writing before the deadline passes. If an appeal is not filed within the specified timeframe, a new application for benefits will have to be filed. This will not only create more delays in processing the case, but it could also result in a reduced amount of back pay.

## Mistake #6 Exaggerating Your Condition or Making False or Inconsistent Statements

You will be asked to provide information about your condition at every stage of the process. Social Security will send forms that you and your family members will need to complete and they will often compare your reports to your medical records to make sure your statements are consistent. Therefore, it is critical to tell the truth and not exaggerate. Make sure that what you tell your doctors and your family is consistent with the information you give to Social Security. It is important to be honest and upfront about your condition, but without exaggerating your problems.

Sometimes at a hearing, a judge will ask a client what they do all day. Some clients believe that they have to appear bedridden in order to qualify for benefits, so they will say that they do nothing but stay in bed all day long. Most judges know that statements like these are an exaggeration. It is possible to be disabled but still do light housework or even go to the store now and then. Furthermore, it is likely that your medical records will reflect some of your normal activities. If you tell the judge that you stay in bed all day long, but your doctor mentions in your records that you had been out mowing the grass, the judge is going to question your credibility. It is better to admit that you are able to do some chores rather than get caught in a lie.



Not only is it important to be honest with Social Security, but you also must be honest with your attorney. The truth always comes out. It is better that we know about a problem beforehand so we can develop a plan to deal with it.

## Mistake #7 Failing To Keep Documentation

Documentation is incredibly important when dealing with the Social Security Administration. You should get accustomed to documenting everything from your doctor visits to the date you submit paperwork to Social Security. It is a good idea to keep copies of everything that Social Security sends you, and also make copies of everything you mail back to them.

Most Social Security offices are understaffed and incredibly overworked. Naturally, things are sometimes misplaced. That is one reason why it is so important to keep copies of everything received from and sent to the Social Security office. It is particularly important to keep written verification of the date you file any appeals because many local Social Security offices can lose appeal paperwork they receive in the mail. If you have to file an appeal on your own, it is a good idea to file the appeal in person at your local Social Security office and make sure you have a dated copy in your hand when you leave. This is also good advice for any other important transactions you make with Social Security. Always be prepared to show written proof that you did what you were supposed to do.

## Mistake #8 Not Hiring an Attorney

Deciding not to hire an attorney to help you with your disability case can be another costly mistake. An attorney will be able to help you through the long and complicated application and appeal process. If your case has to be heard by a judge, an attorney can attend the hearing with you and make the appropriate legal arguments related to your case. An attorney will also make sure that Social Security has all of your medical evidence before your case goes before the judge.

If you are asked to attend a hearing with a judge, you should not go without an attorney to represent you. Although you are permitted to represent yourself, most judges will encourage you to hire an attorney if you have not already done so. Hearings can be complicated and intimidating, so it can be reassuring to have someone by your side.

You may wonder what problems could come up if you try to handle your own disability claim. Here are a few reasons why it is a mistake not to hire an attorney:

- You may inadvertently miss an appeal deadline, which will mean starting over with a new claim.
- You may not realize that Social Security has neglected to obtain your most important medical records.
- An attorney will know what questions to ask your doctor about your work restrictions.

- You may not know what questions to ask the medical and vocational experts at your hearing.
- The judge may postpone your hearing until you hire an attorney, causing more lengthy delays.
- You may not realize if Social Security miscalculates your back pay, or makes some other payment error.

There are a variety of reasons why claimants may be hesitant to hire an attorney. Some people are concerned with the cost, whereas others just feel that attorneys have a bad reputation. We have had many people tell us that they were actually afraid to call an attorney. You shouldn't let these things deter you from obtaining representation.

Many people are reluctant to hire an attorney because they don't think they can afford one. However, most disability attorneys work on a contingency fee basis, which means we only take a fee if you win. For that reason, cost should not be an issue when deciding whether to hire an attorney for a disability case.

Finally, don't be afraid to call an attorney with questions about your claim. Attorneys are in this business to help people. At Hensley Legal Group, PC we answer dozens of questions for prospective clients every day. We are happy to answer your questions even if you are not ready to hire an attorney. We won't charge you to talk to us. In fact, we want you to call us for help, so don't let the thought of talking to an attorney intimidate you.

# Chapter Four

## **The Responsibilities of Your Disability Attorney and How Attorneys are Paid**

After reading about how failing to hire an attorney could be a huge mistake, you are probably wondering what an attorney does and how he or she can increase your chances of winning your case. This section will describe the various roles of a disability attorney and it will also give you more details about how your attorney will get paid.

### What Are the Primary Responsibilities of My Attorney? Collecting Your Medical Evidence

One of the primary duties of your attorney will be to collect and present your medical evidence. Because your case hinges on the medical evidence, this is one of the most important jobs of your representative. A good disability attorney will not only collect your medical records from your doctors, but will also ask your doctors for detailed statements regarding your work restrictions. Sometimes medical evidence will also be

collected from questionnaires sent to former employers. If medical evidence is missing from your file, an experienced disability attorney will be sure to get it.

## Filing Your Appeals

In addition to collecting and submitting your medical evidence, the attorney is also responsible for filing your appeals. If you hire us, it is our responsibility to make sure that Social Security receives your appeal before the deadline. Appeals can be filed online, so this is a relatively simple process. What becomes more difficult is making sure the appeal does not fall through the cracks once it has been filed. We follow up with the Social Security office every few weeks to check on our cases in order to prevent anyone's appeal from getting lost in the shuffle.

## Representing You at a Hearing

A top priority of your disability attorney will be representing you at a hearing if you are asked to appear before a judge. Disability hearings are informal and non-adversarial, which means that Social Security will not have an attorney present to cross-examine you. However, the judge may ask a doctor or vocational expert to testify at your hearing. You will want a knowledgeable disability attorney on your side to question the experts and elicit favorable testimony for your case.

## Determining the Correct Amount of Benefits

If you win your case, it is helpful to have an attorney who can make sure that Social Security is paying you the correct amount of benefits. Social Security has been known to make mistakes when calculating back pay. An attorney can review your payment documents to make sure your benefits are in order.

These are simply the primary responsibilities of your disability attorney. You may have read all of that and wondered what else an attorney can do for you that you can't do yourself. Here are a few examples:

- We will review Social Security rulings and regulations to develop the best legal argument to win your case.
- We can determine if it is possible to reopen an old application for benefits, thereby increasing the amount of benefits to be paid.
- If necessary, we can obtain employment or tax records to clear up any problems with your earnings statement.
- We will be available to assist with any problems that may arise after your case is approved, such as overpayment and cessation issues.
- We will always be available to answer any questions you have along the way, even after your case is closed. Trust us on this one; our office is much easier to get a hold of than the Social Security office.

## How Are Attorneys Paid on Disability Claims?

As we mentioned earlier, most disability attorneys work on a contingency basis. This means that we only take a fee if you win your case. If Social Security approves the fee agreement you sign with us, they will automatically withhold your attorney's fee from your back pay check. They will send us our portion and send the rest to you. The Social Security Administration regulates the fee an attorney can charge. For cases approved at any stage up through the initial hearing level, there is a cap (maximum) to how much we can charge. That fee cap changes each year. Your fee would be either the maximum we are allowed to charge, or 25% of your past-due benefits – whichever is less. If your case goes before the Appeals Council, your fee could be more than the maximum allowed at the lower stages, but it would never be more than 25% of your past-due benefits. In short, you would never pay us more than 25% of your past-due benefits (and it often turns out to be less if we are capped). Even more importantly, if you don't win your case, you don't owe us any fees.

## What About the Attorney's Expenses?

Expenses are separate from attorney fees. Expenses normally include the cost of acquiring your medical records, as well as postage and photocopy charges. It is important to talk with your attorney about their expense policy. At our office, we do not ask for any money up-front to cover expenses. Because we understand that money is probably tight until your disability checks begin to arrive, we pay for your medical records as we work on your case. Then, if your case is approved, we will ask you to reimburse us for the expenses. Expenses can vary depending on the case but it is

typically a modest amount. If you use our office to represent you, we will not ask you to reimburse your expenses if you do not win your case.



# Chapter Five

## Frequently Asked Questions

After reading all of this information about applying for disability benefits, you probably still have a number of questions. We will attempt to answer some of the most frequently asked questions we receive from our clients, but if you still have questions after reading this book, please do not hesitate to call our office at 1-888-HENSLEY.

**Q: When should I apply for benefits?**

A: You should apply for disability as soon as your medical condition becomes severe enough to prevent you from working.

**Q: Why are so many people denied benefits?**

A: There is no easy answer to this question. The medical disability requirements are very strict. Social Security denies a large number of deserving claims during the initial stages, often because they do not have the correct evidence or sufficient evidence to approve the claim. An experienced disability attorney can help you acquire the evidence you need to win your case.

**Q: What happens if my Request for Reconsideration gets denied?**

A: Unfortunately, most people who ask that their claim be reconsidered are denied a second time. If this happens, you have the option to request a hearing with an administrative law judge (ALJ). An ALJ is an independent judge who knows the Social Security rules. He will hold a hearing to listen to your testimony and issue a decision on your case.

**Q: After I request my hearing, how long will it take for it to be scheduled?**

A: It can take a long time for a hearing to be scheduled due to the backlog of cases at most hearings offices. We have seen cases scheduled within six months of filing the second appeal, but we have also seen cases take over two years to get scheduled.

Because every hearings office is different, it is impossible to say how long it will take in your situation, but it will probably take longer than it should.

**Q: Why does it take so long for hearings to be scheduled?**

A: The hearings office, also known as the Office of Hearings Operations (OHO), has a huge backlog of cases. The number of people filing for disability has increased significantly and there are not enough judges to keep up with the cases coming in. By the time OHO receives your file, there are already thousands of cases ahead of yours waiting to be scheduled for a hearing. In some OHOs, it can take two or more years to get a hearing date.

**Q: How am I supposed to survive financially while I wait for a hearing?**

A: We are asked this question every day and we don't know the answer. Many of our clients receive rent and utility assistance through the township trustee's office. There are also a number of food pantries and charitable organizations that can help. Honestly, there is not as much financial assistance available to you as there should be.

**Q: Can I do anything to speed up the processing of my claim?**

A: There's not much you can do to get your case to move faster, but you may want to consider writing a letter to your Senator or Congressman. Congressional Representatives can contact the Social Security Administration on your behalf. They cannot always get Social Security to attend to your case any sooner, but it never hurts to have a member of Congress on your side.

Sometimes, Social Security will expedite a case due to dire financial need, such as if you are facing eviction or foreclosure. If you are about to lose your home you should communicate with Social Security either directly or through your attorney. However, you should know that notifying Social Security that you are facing foreclosure will not guarantee that they will expedite your case. Social Security is overwhelmed with these requests and they cannot speed up everyone's case. Ultimately, they identify the claimants in the most dire straits when deciding whether to expedite a case.

### Q: How will I be notified of my hearing date?

A: Social Security is required to send you written notification of your hearing date, which is typically issued at least 75 days before the hearing date is scheduled to take place.

### Q: What is the hearing like?

A: Disability hearings are informal proceedings. Your hearing will not be like a trial you see on television. Most hearings are held in an office building rather than a courtroom. There may be several people present at your hearing. The judge may ask a vocational expert or medical expert to offer testimony about your case. As with the judge, these experts are independent professionals and they are not there to interrogate you. The hearing will focus on the reasons why you cannot work, so don't be surprised if you do most of the talking at your hearing. The judge and your attorney will ask you a variety of questions about your symptoms and daily activities. The judge wants to know why, in your own words, you can't work.

### Q: Will I find out if I am approved for benefits at the hearing?

A: Very few cases are decided at the hearing, so you probably won't find out until after the hearing whether you've been approved. The judge is required to send you written notice of the decision. These notices can take a long time to write because the judge's decision is explained in detail, referencing the specific medical records and testimony that support the decision.

**Q: After my hearing, how long will it take for a decision to be issued?**

A: It often takes two to three months after the hearing for a decision to be issued. It can take longer than that, though, depending on your judge.

**Q: Can I work and still get disability?**

A: This is a good question with a complicated answer. Because it takes so long to resolve disability claims, many people consider going back to work in order to meet their financial obligations. We never want to discourage people from attempting to work, but there are facts that you need to know before making this decision.

If you think you can work, you can be sure that you will make more money working full time than you would get from disability benefits. You can also be confident that if you are able to work, your medical records will reflect this. If you are not sure whether your medical condition will allow you to work and you are thinking about trying, you should know that working can definitely affect your eligibility for disability benefits. SSA allows you to work a little without being automatically disqualified, but they will look closely at your income to make sure you do not exceed their limits.

Aside from the income, there is another thing that you must consider when deciding whether you should attempt to work. Although Social Security places a heavy emphasis on the amount you earn at a job, they also will look at the type of work you are doing and how it compares to your allegations of disability. For example, if you are telling Social Security that you are disabled because of a back problem, but you are working

part-time in construction doing heavy lifting, it will cast doubt on your claim. Just because you are under the earnings limit doesn't mean your work will not have an impact on your case.

On the other hand, there are situations when an attempt to find a job can actually help your case. Many people try to go back to work but, soon after, they realize that they cannot perform the job due to their medical condition. If you return to work, but end up leaving the job after a short period of time due to your medical condition, it could be considered an unsuccessful work attempt. Many times an unsuccessful work attempt actually serves as evidence that a person really cannot work. Plus it shows Social Security that you honestly want to work, but you can't.

Social Security's rules about working are very complicated, and you should talk with your attorney before making changes to your work activity.

#### **Q: Will I get health insurance along with my Social Security benefits?**

A: You can get Medicare if you have worked enough and if have waited long enough. If you are approved for DIB, you are normally entitled to Medicare on the 25<sup>th</sup> month after your date of entitlement. Your date of entitlement is not necessarily the date you receive your first check, but rather the first month in which you become eligible for benefits. If you decide to accept Medicare coverage, Social Security will deduct the premium from your disability check.

**Q: Can I still get Medicare even if I don't have enough work credits?**

A: If you are only approved for Supplemental Security Income (SSI), you cannot get Medicare, but you may be able to get Medicaid instead. You will have to contact the Medicaid office to find out if you are eligible.

**Q: How will my attorney get paid if I win my case?**

A: If your claim is approved, the attorney fee will be withheld from your back pay. Social Security will release the fee to your attorney and then release the rest of the back pay directly to you. If you are approved without back pay, we would not receive an attorney fee; we would only ask you to reimburse your expenses.

**Q: Will I receive benefits for my children?**

A: If you are approved for DIB, and if you paid enough into the system to result in a higher family benefit, you may be able to receive benefits on behalf of your children. Your children must be under the age of 18 (or under the age of 19 and still in high school) during your period of entitlement. There are specific rules for who is legally considered your child, so you should talk with your local Social Security office if you believe that your children should be entitled to benefits. If you are only entitled to SSI, you will not receive additional payments for your children.

**Q: How far back will my benefits go?**

A: When Social Security decides that a person is disabled, they also decide on the date that the disability began. This is called the "onset date." Your onset date usually corresponds

with the date you stopped working, or it can coincide with an injury or diagnosis. If you are approved for DIB, your first payment will be the sixth full month after your onset date. This waiting period is written into the law and cannot be appealed. Additionally, if you wait longer than a year to file your claim for DIB, there is another rule that limits back pay to 12 months before the application was filed. So, your benefits will begin either 12 months before you applied, or the sixth full month after your onset date, whichever is later.

If you have not worked enough and are only eligible for SSI, you will not be paid for any months prior to your application date. The earliest SSI pays benefits is the month after the application date, regardless of your onset date.

#### Q: What will the amount of my monthly benefits be?

A: If you are entitled to DIB, your benefit amount is calculated based on your earnings. Typically, the more money you earned when you were working, the higher the monthly benefit will be.

If you are only eligible for SSI, your monthly benefit is calculated based on your household income and assets. You can be paid up to the SSI maximum (which changes each year), but that payment amount can fluctuate each month based on your other income and assets.

#### Q: Will your office charge me to review my case?

A: No, we will not ask for any money up-front. We offer a free consultation so we can sit down with you and evaluate your case. We can meet with you anywhere you like,



whether it is our office, by phone, or at your home. There is no obligation to use our services after you have met with us either.

**Q: Do you represent clients anywhere in Indiana?**

A: Yes. We represent clients all over the state. We can even represent clients who do not live in Indiana, so don't let distance stop you from contacting us.

**Q: When can we start?**

A: We can start as soon as you are ready, just call us for a free consultation. Social Security has very strict deadlines so it is important to not delay.

**Q: Do you have any additional tips I should be aware of?**

A: Here are some additional pointers you may want to keep in mind when dealing with Social Security:

- Keep written documentation of all transactions with Social Security.
- Keep all letters and notices you receive from Social Security in a safe place.
- Read every letter you receive from Social Security as well as all letters from your attorney.
- Promptly report all changes to Social Security (including contact information changes, changes in household income, and work activity). When notifying Social Security of a change, you should file a written report with the Social Security office and keep a copy for your records. It is always a good idea to have written proof that you reported the information to the Social Security office in case they lose the paperwork.

- If you need to call Social Security, you should try calling your local office first. Your local office is the best source of information about the specifics of your claim. It is appropriate to call the main Social Security customer service line (the “800 number”) if you have general questions about Social Security or Medicare.
- Whatever you do, don't stop getting medical treatment! It is important to continue your medical treatment even after your claim is approved. This is because Social Security may want to review your case in a few years to make sure that you are still disabled. If you stop going to the doctor, they may think your health has improved and they could decide to stop paying you benefits.
- If you are thinking about going back to work, talk to your lawyer first.
- Don't give up! You have to fight for your benefits.

# Glossary of Legal Terms

**Activities of Daily Living (ADLs).** Social Security will ask about your daily activities. Your ADLs are one way in which Social Security gauges the severity of your disability.

**Adjudicator.** The adjudicator is the person assigned to evaluate your medical condition and issue the decision on your disability claim.

**Administrative Law Judge (ALJ).** An ALJ is an independent judge who knows Social Security law. When you request a hearing, Social Security will assign an ALJ to your case. The ALJ will review your file, listen to your testimony and make a decision on your claim.

**Appeals Council (AC).** If your claim is denied by the ALJ, you have the option of filing another appeal. If you appeal the ALJ's decision, your file will be sent to the Appeals Council in Virginia. The AC consists of a panel of judges who will review your file to determine whether the ALJ on your case made a mistake.

**Beneficiary.** A term used to describe anyone who is receiving Social Security benefits.

**Cessation.** Sometimes after Social Security does a continuing disability review, they determine that a claimant is no longer entitled to benefits. When Social Security stops paying benefits, either due to medical or financial reasons, it is known as a cessation.

**Claimant.** This is the term used to describe the person who has filed a claim for benefits.

**Claim Number.** Most Social Security offices track claimants by Social Security number. Therefore your claim number is generally your Social Security number.

**Concurrent Claim.** This is the term used when a person files a claim for both DIB and SSI at the same time.

**Consultative Exam (CE).** Many applicants are asked to see an independent doctor for a physical or psychological exam.

**Continuing Disability Review (CDR).** Nearly every disability claim that is approved must eventually undergo a CDR. This is Social Security's way of making sure that your medical condition has not improved. Normally CDRs are done every three to five years, but they can be done more often if your condition is expected to improve sooner than that. During a CDR, Social Security will collect your medical records to make sure that you are still disabled.

**Cost of Living Adjustment (COLA).** Normally, Social Security benefits go up a small percentage each year to coincide with the increased cost of living caused by inflation. For years in which there is no inflation, Social Security does not administer the cost of living adjustment.

**Date Last Insured (DLI).** The DLI is the date a claimant's work credits expire. You must prove that you became disabled prior to your DLI in order to qualify for DIB.

**Date of Entitlement for DIB.** This is the first month in which you are eligible to receive a disability payment. For those who are entitled to receive DIB, their date of entitlement is either the sixth full month after the onset date, or the twelfth month before the benefit application, whichever is later.

**Date of Entitlement for SSI.** For those only entitled to SSI, the date of entitlement is the first full month in which the financial and medical requirements are met, but it cannot fall before the application for benefits was filed.

**Disability Determination Bureau (DDB).** The DDB is the state agency in charge of making decisions on initial applications. The DDB will also review your file if you have to file a Request for Reconsideration. Although the DDB is an agency of the state in

which you live, it must abide by federal regulations, therefore every state follows the same guidelines for determining disability.

**Disability Insurance Benefits (DIB).** This is the type of disability benefit for which you work and pay taxes. In addition to meeting the work credit requirements, you must also meet the medical requirements for disability.

**Family Maximum (FMAX).** This is the maximum amount of benefits all members of a family can receive on one worker's record.

**Listing of Impairments.** The *Listing of Impairments* (or "Listings") describes, for each major body system, impairments considered severe enough to prevent an individual from doing substantial gainful activity. The Listings specify the medical criteria that must be met for a person to qualify for benefits based on a specific diagnosis.

**Local Office.** Your local office is generally the field office closest to your place of residence. The local office is responsible for taking your application for benefits. They can answer specific questions about your claim and will accept appeals.

**Medical Expert (ME).** MEs are sometimes used by judges during disability hearings. The role of the ME is to help the judge understand the medical records. The ME may also offer an opinion about whether your medical condition meets or equals a condition in the *Listing of Impairments*.

**Office of Hearings and Appeals (OHO).** Also known as the hearings office, this is the office where the judges work and hear cases. If you have to file a Request for Hearing, your file will be sent to an OHO office for a hearing to be scheduled.

**Onset Date.** Your onset date refers to the date that you first meet the disability criteria. In other words, it is the date that you became disabled.

**Past Due Benefits (PDB).** This can also be known as back pay or retroactive benefits. Your monthly benefits accrue while you wait for Social Security to make a determination on your claim. When it is time for Social Security to pay your benefits, you may receive a lump-sum check for the retroactive period.

**Past Relevant Work (PRW).** Social Security considers any work that you did within the 5 years prior to your disability as relevant work. They will gather information from you regarding your job duties and special skills you may have learned at these jobs.

**Primary Insurance Amount (PIA).** This is the term that Social Security uses to describe your monthly payment amount if you are entitled to DIB.

**Quarter of Coverage (QC).** When you work and pay Social Security taxes, you earn QCs. If you accumulate enough QCs, you become insured for disability benefits under the Disability Insurance Benefit (DIB) program.

**Representative Payee.** Sometimes Social Security determines that a person needs help managing his benefits. In these situations, Social Security will assign a payee to handle the funds. Usually it is a family member, friend, or institution such as a mental health provider.

**Request for Hearing.** If your Request for Reconsideration is denied, you have the option of filing a second appeal, called the Request for Hearing. When you request a hearing, Social Security sends your file to the Office of Hearings Operations where it will be assigned to a judge and scheduled for a hearing date.

**Request for Reconsideration.** If your initial application for disability benefits is denied, you have the opportunity to file an appeal. This first appeal is called a Request for Reconsideration.

**Residual Functional Capacity (RFC).** Your residual functional capacity is the most you can do in spite of your physical and/or mental impairments. It is defined in terms of specific work restrictions, such as sitting, standing, lifting or remembering.



**Sequential Evaluation.** This is the five-step process by which Social Security determines whether a person meets the medical requirements of disability. The process begins by determining whether you are performing substantial gainful activity and ends with determining whether you can perform any work activity in spite of your impairments.

**Services Level.** This is a term used to describe a gross monthly income threshold. If a claimant is working but making under SGA, he may still qualify for disability benefits. If the earnings exceed the services level, a trial work period may be triggered. The services amount changes each year.

**Social Security Administration (SSA).** SSA is the federal agency that administers disability and retirement benefits.

**Substantial Gainful Activity (SGA).** In order to qualify for disability benefits, a person cannot be performing substantial gainful activity (SGA). SGA is identified by a specific amount of gross monthly income (which changes each year). A person who is earning more than that amount is generally considered to be performing SGA.

**Supplemental Security Income (SSI).** SSI is a needs-based disability program. In addition to meeting the medical criteria, you must also meet strict financial criteria regarding income and assets. You do not need any work credits to qualify for SSI.

**Third Party.** Social Security often asks for reports from friends and family members regarding a claimant's daily activities. This friend or family member is referred to as a third party.

**Trial Work Period.** Social Security allows claimants to test their ability to work and still receive benefits. If you return to work and earn over the services level of income, you will start a trial work period. The trial work period rules are complicated, but normally you can receive your benefits for up to nine months of a trial work period.

**Unsuccessful Work Attempt (UWA).** Many people make unsuccessful attempts at returning to work. For a work attempt to qualify as an unsuccessful work attempt under Social Security regulations, you must first have a period of no work activity related to your disability. Your work attempt must last a short period of time (typically no longer than six months) and your work activity must end because of your medical condition. If your work attempt meets all of the requirements, it will not be counted against you.

**Vocational Expert (VE).** VEs are often used by Social Security to provide testimony regarding the exertional and skill level of a person's past work. A VE may also be used to determine whether there are any jobs a claimant with certain restrictions could perform.

**Wage Earner.** Some people qualify for benefits on another person's record (a deceased spouse, for example). The wage earner is the person on whose record you are filing if not your own.

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### **About the Authors**

**John D. Hensley** was born and raised in central Indiana. He earned his Bachelor of Science Degree at Ball State University, and his Juris Doctor Degree at Valparaiso University School of Law. John has always been driven to protect the rights of his fellow Hoosiers—this is why his law practice is devoted to helping people who have been injured. In 1998, John opened his own law office in downtown Indianapolis. Every day he brings his experience and compassion to his law practice to achieve the best possible results for his clients. John helps people collect their Social Security Disability benefits, but he also represents people who have been injured as the result of vehicle accidents, dangerous products, medical malpractice, and nursing home abuse. He represents his clients vigorously and with great success. John is admitted to practice law in all Indiana State Courts, the U.S. District Court for the Southern and Northern Districts of Indiana, and all Florida State Courts. He belongs to the Indiana Trial Attorneys Association and the American Association for Justice, formerly the Association of Trial Lawyers of America (ATLA).

**Kathleen Kreicker** has worked for Hensley Legal Group, PC since 2002. She began her career with the Hensley Legal Group, PC after graduating from Marian College with dual degrees in history and Spanish. Kathleen worked with John in the Social Security disability department from 2003 until 2018 when she moved into office operations. She finds this area of law very rewarding and receives deep satisfaction from helping the clients of HLG. Kathleen grew up in Greenwood, Indiana and still resides on the south side of Indianapolis.