

Helpful Suggestions for Appealing a Denial of Benefits



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Introduction

I hope the disappointment and frustration you felt upon receiving your denial has passed, and you are now ready to focus on your appeal.

If not, perhaps it will help to know that as a denied applicant for Social Security disability benefits, you are not alone. 65% of applicants are rejected at the initial level. In other words, 2 out of 3 people who believed themselves to be qualified for benefits, and who dutifully completed the application and subsequent Social Security forms, received a denial letter just like you. Obtaining approval at the initial application level is often unpredictable.

The disability evaluation system is dysfunctional in that way; most applications are rejected but many appeals are granted. A big part of the reason for these contradictory outcomes is that initial applications are judged without seeing the applicant, while appeals at the hearing level involve a face-to-face meeting with the decision-maker.

The lesson is that persistence pays. If you pursue benefits through the hearing level with a knowledgeable disability attorney at your side, instead of giving up after receiving your initial denial, you have a good chance of being awarded benefits.

To help with your appeal, below are some suggestions for what to do after receiving a denial. These tips are based upon many years of experience helping rejected applicants through a confusing but frequently rewarding process.

The advice in this booklet is organized under these four headings:

1. [Why Most Applications Are Initially Rejected](#)
2. [Tips for a Successful Appeal](#)
3. [Common Mistakes to Avoid](#)
4. [Answers to Frequently Asked Questions](#)

I. Why Most Applications Are Initially Rejected

a. *Some applicants do not understand the criteria for eligibility.* This is understandable given the complexity of the Social Security Administration's (SSA) evaluation system. The result is that many unqualified people apply, and they account for a meaningful proportion of those rejected. Here is a simple and reliable rule that you can follow in deciding whether to continue pursuing benefits after an initial denial: if you cannot work, you should appeal.

b. *Some applicants do not obtain appropriate medical care.* Some people with long-term chronic medical problems feel they have not been helped much by doctors, so they stop going for treatment. This is a mistake for both medical and legal reasons. First, no one needs good medical care more than those with chronic medical problems. Second, medical treatment records provide the most important evidence of disability in a Social Security disability case. Hopefully, you have been obtaining medical treatment that is consistent with your impairment.



c. *The medical records on file are inadequate.* Your medical providers may not have sent all the records requested, your medical records may not have been current, or they may not have been properly evaluated.

d. *SSA does not meet the applicant until late in the evaluation process.* The state agency decision-makers who reviewed your initial application had only your file. Examiners rarely look beyond the written medical findings in that file to consider whether you are actually able to work.

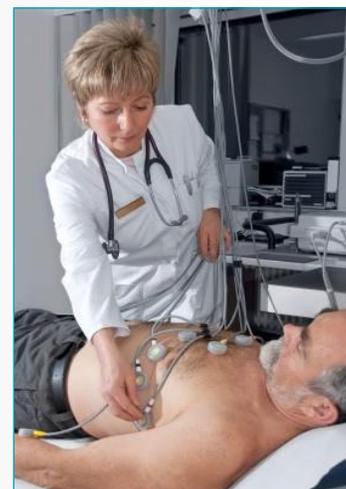
State agency decision-makers must also apply specific formulas found in state agency manuals to determine residual functional capacity (RFC) for certain medical impairments, thus all claimants with similar medical findings are treated the same. Few of the state agency formulas in these manuals indicate that a claimant cannot do sedentary work.

On the other hand, the Administrative Law Judges (ALJs) who handle hearings tend to view their role as evaluating the entire case, including the claimant's credibility, to determine the claimant's capacity for work. ALJs find claimants under age 50 disabled because of an inability to do sedentary work much more often than state agency decision-makers do.

2. Tips for a Successful Appeal

a. *Do not give up.* You have already done a fair amount of the work necessary to get to the hearing level. Your attorney will take care of most of the remaining work. More importantly, the odds are now in your favor.

b. *See a specialist.* If you are not already seeing a specialist for your condition, ask your physician to refer you to one. A specialist will have more expertise than a primary care physician, and thus, a specialist's opinion will carry more weight than a generalist's. Specialists for some common disabilities are: cardiologist (heart), endocrinologist (diabetes), neurologist (brain and nerves), oncologist (cancer), orthopedist (bones), podiatrist (feet), psychiatrist (mental health), pulmonologist (lungs), rheumatologist (arthritis, fibromyalgia, complex regional pain syndrome), and urologist (kidneys).



c. *Get your doctor on your side.* Because Social Security gives your treating doctor's opinion great weight, it is important that you obtain his or her cooperation with your disability claim. This means telling your doctor that you have applied for disability, establishing a good relationship with a member of the doctor's staff who can help you, and being on the alert for any anti-benefit sentiment from your doctor. It is important to attend all of your appointments and follow your doctor's instructions and advice.

d. *Obtain a medical opinion that the decision-maker can use.* It is important for your treating doctor to give his or her opinion on your residual functional capacity (RFC). The RFC test evaluates what you can do in a work setting despite the functional limitations and environmental restrictions imposed by your impairment. SSA wants to know your physical ability to sit, stand, walk, and lift, and your mental ability to understand, remember, concentrate, persist, interact with others, and adapt to change. Letters from doctors vary widely in their usefulness to SSA. Medical source statements are a better way for your doctor to provide helpful information to SSA.

- e. *Get a thorough medical evaluation.* Ensure your doctor has the information to produce a complete and detailed medical source statement by providing him or her with details of every impairment you have. Specify how each condition limits your productive activities. Social Security disability does not require that an injury occurred at work, so include all medical conditions, however, or whenever they occurred. Important to SSA is the cumulative limitation caused by all of your impairments combined.

- f. *Continue your medical care.* You might feel that your current treatment is not helping your condition, or maybe you have difficulty affording treatment. If you cease treatment, SSA may logically assume that you have recovered or no longer need medical help. For both your health and your claim, it is important that you follow your doctor's treatment recommendations.

- g. *Keep contemporaneous records of your medical care.* It is easier to maintain a current record of treatment than to reconstruct a history from memory and old records. A diary of which doctors you saw when, and for what, will help you provide a detailed and accurate list of your medical treating sources. Do the same for medications, therapy, and medical tests received.

- h. *Document your limitations.* Keep a diary of your good and bad days, what you accomplished each day, how you felt, and what limitations you suffered. This diary, periodically updated, will help you accurately and persuasively convey to your doctor, lawyer, and judge the effect your impairment has on your ability to work.

3. Common Mistakes to Avoid

a. *Inaccurately describing your limitations.* Exaggerating the impact of your impairment will damage your credibility and your claim, but so will understating the impact of your impairment. It is important that your description of your limitations is consistent over time and with your medical records. Being candid and providing accurate details are the best ways for that consistency to occur. The diary described on page 4 will help.



b. *Waiting too long to file your appeal.* Whether appealing a denial of your initial application or of a reconsideration, you have 60 days from receipt of the denial to file your appeal. Since SSA assumes five days for delivery, the exact time period is 65 days from the date of your denial. Limited exceptions exist, but in most situations you will have to start over and reapply if you miss the deadline for appealing.

c. *Focusing on your worst impairment.* List all of your medical conditions whether you are communicating with SSA, your doctor, or your lawyer. SSA will look at all of your medical conditions, not just the most severe. A condition you omit because you deem it unimportant might affect your claim in a way that you did not consider.

d. *Filing for unemployment benefits.* When you seek unemployment benefits you have to declare that you are physically and mentally capable of working. This declaration will be contrary to your claim to SSA that you are unable to work. With limited exceptions that your lawyer can explain, receiving unemployment benefits while you are claiming to be disabled is sometimes fatal to your disability application.

e. *Illegal drug use, alcohol abuse, or tobacco use.* SSA no longer considers drug addiction or alcoholism compensable disabilities. If you suffer from either one of these conditions, it complicates your case. Seek treatment now for these problems and abstain totally until your case is complete. It is often difficult to prove to SSA that these conditions are not a material cause of your inability to work. Similarly, if you are seeking disability because you have a breathing problem and yet you still smoke, SSA is unlikely to award you benefits unless you follow your doctor's advice and stop smoking today.

4. Answers to Frequently Asked Questions

Do I need to be permanently disabled to qualify for benefits? No, but your impairment must have lasted or be expected to last at least 12 months, or must be expected to result in death. However, you do not need to wait 12 months to apply. Apply as soon as it is clear that your disability will last 12 months.

Why does my age affect my eligibility for benefits? SSA figures that a younger person can more readily learn a new job than an older person. Age is second only to residual functional capacity as a determining factor. SSA groups claimants who are under age 45, those ages 45 through 49, 50 through 54, 55 through 59, and 60 through 64. Those within each age category are treated alike. Thus, a 50-year-old claimant will be treated the same as a 54-year-old claimant.



I was hurt on the job and I am receiving workers' compensation. Must I wait until workers' compensation stops before applying for Social Security disability? No. You may apply immediately after an injury if it looks like your disability will last 12 months. However, you will not be able to receive full benefits from each source simultaneously. One will offset the other.

Will my Medicaid coverage be affected by disability benefits? No. If you already have coverage, it will continue.

SSA says my file was lost. Do you have any suggestions? Call the office of your U.S. Senator or Representative. Congressional offices can be reached through the switchboard at (202) 224-3121. Give the operator your zip code. Once you reach your congressional office, ask to speak to the staff member who works with Social Security. Lost files are usually found quickly after a congressional inquiry.

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When will Social Security Disability Insurance (SSDI) benefits start? If SSA finds you were disabled before your application date, you may be entitled to retroactive benefits. The retroactive period for Disability Insurance benefits cannot be longer than 12 months. Actual cash payments cannot begin, however, until five months after the onset of your disability.

When will Supplemental Security Income (SSI) benefits start? Supplemental Security Income benefits will begin the month after the date you filed your application, or the month after the date SSA found you to be disabled, whichever is later.

Should I hire an attorney for my appeal? Most neutral commentators say "yes". The disability hearing is a complex and high-stakes event, and expert legal guidance before and during the hearing will affect its outcome.

What questions should I ask any attorney I am thinking about retaining?

- Will you be personally handling my case and attending my hearing?
- How many years have you been representing Social Security disability claimants?
- What percent of your law practice is devoted to Social Security disability cases?
- Who else will be working on my case? What tasks will they handle? What are their qualifications?
- What fees and expenses will I be charged?

Conclusion

I hope you have found this advice helpful. More information may be found on my website at www.mkhansenlaw.com.

Contact us with any questions at (402) 477-0230



For all cases at the Initial and Reconsideration levels, contact Trisha at Ext. 2 or trisha@mkhansenlaw.com

For all cases at the Administrative Law Judge level, contact Brittany at Ext. 5 or brittany@mkhansenlaw.com

For all matters relating to the Appeals Council or post-decision questions, contact Karen at Ext. 1 or karen@mkhansenlaw.com