

How do I prepare my case?

Medical Records: Your medical records are usually the best evidence of your impairments and why you cannot work. It is very important that you tell your doctor about all of your impairments every time you see him or her. Do not assume that the doctor knows that a given impairment is still bothering you, you must actually restate it each and every time to be sure that the doctor's notes adequately reflect your true condition. If your doctor will support you in your case, you should ask your doctor to provide a statement setting out how your impairments impact your ability to sit, stand, walk, lift, carry and whether you will be able to work at a sustained pace for more than four hours a day. You should also obtain and submit any hospital records if you have had to seek emergency medical treatment or inpatient/ out-patient treatment at the hospital. If you suffer from any mental impairment, such as depression, anxiety, ADHD and the like, you should seek and obtain treatment for this impairment to support your testimony of the impact this impairment has upon your ability to concentrate, deal with supervisors, deal with the public, handle work pressures, carry out detailed instructions and the like. You will need to get treatment to establish this impairment.

Educational Records: Educational records can be helpful in your case if you were in special classes and/or the records contain IQ testing and the like which will help your case.

Vocational Records: If you have obtained the services of Vocational Rehabilitation and they have not been able to assist you in returning to work, those records will usually be helpful in your disability case. You can request those records and submit them in your case.

How should I submit records in my case?

It is recommended that you obtain all the records you can reasonably obtain and submit them in one package to your local Social Security Office or the Administrative Law Judge (if you are at that level). If you are unable to obtain records that you believe will be helpful to your case, you should request in writing to the ALJ prior to your hearing that he obtain those records for you. Also, if you have an important medical test scheduled after the hearing date, you should advise the ALJ prior to the hearing and request that the record remain open to obtain this additional evidence.

Should I retain an attorney to represent me? Yes. Private attorneys take initial entitlement cases, even SSI cases now because the Social Security Administration will withhold attorneys' fees out of back benefits awarded. An attorney representing disabled persons before the Social Security Administration must agree to accept 25% (but no more than \$5,300) as the total fee. An attorney only gets paid if they are successful in getting the client on disability. The attorney is not allowed to take any fee out of ongoing disability benefits once they are awarded.



The Florida Bar Foundation, with *Interest on Trust Accounts* program funding, provides support for this service.

FloridaLawHelp.org

To locate your local legal aid or legal services office, please visit us on the web at

www.floridalawhelp.org

Your local legal aid or legal services office can be located through either the "Find Local Help" or "Directory" links at the top of the page.

If you don't have access to the internet, consult your local Directory Assistance for the number of the legal aid or legal services office nearest to you.

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You Have Been Denied Social Security Disability: What You Must Know

Understanding the process:

The Social Security Administration has two programs to provide for disability benefits.

Disability Insurance Benefits (DIB) are benefits that you have accrued by paying Social Security out of your pay. You have to pay into the system five years to be eligible for this benefit and the amount of this benefit depends upon how much was paid in. You can pay in enough to earn disability benefits for yourself as well as dependent benefits (for your minor children while you are disabled). After five years of not paying Social Security tax or not paying enough, you will “run out of benefit” and no longer be insured for DIB.

Supplemental Security Income (SSI) benefits are disability benefits for those that have not paid into the system to earn DIB or have paid too little to be insured over the SSI amount. It is possible to receive both DIB and SSI but the two checks will never amount to more than the SSI amount. The SSI benefit amount is a set rate and is increased slightly each year due to the cost of living increase. SSI is need based. You are allowed to own your own home and car but there are some other exclusions. For more information on this, you can find it at www.ssa.gov or get a brochure from your local Social Security Office. Your resources are limited.

How do I appeal a denial of benefits?

There are many appeal levels when fighting for your disability benefits. If you are denied on your initial application, you must appeal within sixty (60) days to preserve your onset date.

Your onset date is the date you became disabled. For SSI your onset date is no earlier than the date you apply initially (either by telephone or by submitting your paperwork). For DIB, your onset date is the date you became disabled but no earlier than one year prior to your application date.

Request for Reconsideration: To appeal an initial denial, you must file a Request for Reconsideration within sixty (60) days of the date of your denial. You will be required to also complete additional forms providing more information about your impairments and treatment.

Request for Hearing before an Administrative Law Judge: If you are denied on Reconsideration, you must file a Request for Hearing before an Administrative Law Judge within sixty (60) days of the date of denial. Again, there is another form that they will require you to complete providing information about your impairments. At this level, you will get a hearing. The ALJ will review the record, all new medical evidence submitted and listen to your testimony. He will send out a written decision after the hearing. It can take several months.

Request for Review of Hearing Decision/Order: This is an appeal to the Appeals Council. You must file the Request for Review of Hearing Decision/ Order form within sixty (60) days of the date of the Unfavorable Decision. If you have any new and material evidence you should submit those with the Request for Review. The Request for Review is filed at your local Social Security office. You can anticipate waiting up to two years for a decision from the Appeals Council. Six months after you have appealed the unfavorable decision to the Appeals Council, you may file a new application for disability if you can allege that your medical condition has gotten worse since the ALJ hearing in your case.

Should I file a new application for disability while my claim is pending at the Appeals Council?

Yes. Because the Appeals Council is taking so long, it is recommended that you also re-file, as you may get a favorable decision while you are still waiting for the Appeals Council to act. Be mindful that on the new application, the Social Security Administration will not grant you benefits prior to the date of the Unfavorable Decision, only after that date. The Appeals Council may affirm the unfavorable decision, remand your case back to the ALJ for a new hearing or reverse the ALJ's decision.

Filing Suit in Federal District Court: You have sixty (60) days from an unfavorable Appeals Council decision to file suit in Federal District Court. This is essentially a paper appeal, as you will not have a hearing in federal court. You will also need the In Forma Pauperis application (to request that the filing fee be waived because you are poor). You will need an attorney to properly proceed at this level.

How does Social Security determine whether I am disabled?

Social Security evaluates disability based upon a number of factors. The person seeking benefits must show that they are unable to work at a substantially gainful level on a regular and sustained

They will also consider your age, education and work background. A person who cannot read or write or is otherwise limited in their education will have that considered as well, since this will affect the person's ability to perform even sedentary (sit down) work. SSA also considered whether you have acquired any skills. SSA is only allowed to consider your work background for the fifteen years prior to your application for disability.

How do I find an attorney to represent me?

The National Organization of Social Security Claimant's Representatives has an attorney referral number 1-800-431-2804. The name and number of an attorney who practices Social Security Disability law in your area will be provided to you. It would be in your best interest to shop around. You can meet with several attorneys who practice Social Security disability law and then select one whom you believe would do the best job for you.



This brochure is for general education only. It is not intended to be used to solve *individual problems*. If you have specific questions, see an attorney.

Do not ignore your bills. The sooner you face these issues, the easier it will be to resolve them.