



HOW TO WIN
YOUR SOCIAL
SECURITY
CLAIM

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DEDICATION

I wish to dedicate this Book to the many Clients that I have helped over the years and have learned such a great deal from.

To my wife and my joy, my children. Without these influences, I would not know the passion required to help others in their time of need.

Bill Berke.

BERKE LAW FIRM, P.A. HANDLES SOCIAL SECURITY
DISABILITY CASES ON A "CONTINGENCY BASIS" AND IS
ONLY PAID IF IT IS SUCCESSFUL IN OBTAINING BENEFITS
ON YOUR BEHALF.

IT IS THE MISSION OF OUR FIRM TO RESPONSIBLY AND
PROFESSIONALLY REPRESENT THE NEEDS OF THE
DISABLED AND THEIR FAMILIES.

TO PURSUE THE RIGHTS OF THOSE IN NEED UNDER THE
LAW AND TO OBTAIN THE FULLEST AMOUNT OF
COMPENSATION AND BENEFITS THAT THE LAW ALLOWS

CONTENTS

INTRODUCTION.....	i
CHAPTER ONE.....	3
WHAT TYPES OF DISABILITY PROGRAMS ARE AVAILABLE?	3
CHAPTER TWO	11
HOW DO I MEET THE EARNINGS REQUIREMENT FOR SOCIAL SECURITY DISABILITY?.....	11
CHAPTER THREE.....	15
HOW TO APPLY FOR SOCIAL SECURITY BENEFITS.....	15
CHAPTER FOUR.....	21
WHEN SHOULD I APPLY FOR SOCIAL SECURITY DISABILITY	21
CHAPTER FIVE.....	27
WHO DECIDES IF I AM DISABLED.....	27
CHAPTER SIX.....	35
WHAT IF MY CLAIM WAS DENIED AND I DISAGREE WITH THEIR DECISION ?.....	35
CHAPTER SEVEN.....	39
WHAT HAPPENS AT MY ADMINISTRATIVE LAW JUDGE HEARING.....	39
CHAPTER EIGHT	55

HOW TO WIN YOUR SOCIAL SECURITY CLAIM

WHAT IF I AM DENIED BY THE ADMINISTRATIVE LAW
JUDGE..... 55

CHAPTER NINE 67

WHAT IF I'M DENIED AGAIN..... 67

CHAPTER TEN 75

WHAT IF MY CLAIM IS APPROVED: 75

CLOSING STATEMENT 81

INTRODUCTION

The Social Security Administration's Regulations lists a **FIVE STEP** process used to determine whether a person is disabled.

Step 1: Social Security considers your work activity, if you have any, and whether you have been able to perform "Substantial Gainful Activity" or SGA. SGA is work activity that rises to a specific amount and frequency.

Step 2: Social Security determines if you have a "severe" impairment that significantly limits your ability to perform basic work like activities. Your severe impairment(s) also have to meet a duration requirement. (12 months duration, or an expectation that it will result in death).

Step 3: Do you have an impairment(s) that meet or exceed the established criteria contained in one, or more of Social Security's Listings of Impairments, or

“The Listings”. These are specific criteria that you must meet. If your impairment(s) meet or exceed these listed criteria, you will be found “Disabled”.

Step 4: Social Security determines your Residual Functional Capacity, or “RFC”. (How long you are able to sit, stand, walk – how much you are able to lift and carry, whether you can see, hear, attend work, read, write, and whether or not you can concentrate, remember things, deal with people, etc...). Once your maximum RFC has been determined, Social Security determines whether or not you can perform the type of work you performed, in the past.

Step 5: Social Security determines if there are any other jobs in the national economy that you are able to perform.

CHAPTER ONE

WHAT TYPES OF DISABILITY PROGRAMS ARE AVAILABLE?

THE SOCIAL SECURITY ADMINISTRATION PAYS DISABILITY THROUGH TWO (2) DIFFERENT PROGRAMS

1. Social Security Disability Insurance (SSD)
2. Supplemental Security Income (SSI).

DEFINITIONS:

I. DISABILITY BENEFITS:

TITLE II (sometimes called T2, OASDI, RSDI); 42 U.S.C. SS 401 ET SEQ; 20 C.F.R. Pt.404.

1. Disability Insurance Benefits: (DIB) also known as (SSD) or (SSDI).
2. Disabled widow's/widower's benefits (DWB).
3. Disabled adult child benefits (DAC); also known as childhood disability benefits (CDB) or childhood insurance benefits (CIB).

B. NONMEDICAL REQUIREMENTS:

1. DIB: This program is for individuals that have accumulated enough Quarters of Coverage (QC) from paying Social Security taxes to have "disability insured status".

a. Disability Insured Status requires: an individual to have accumulated twenty (20) QC's paid in Social Security taxes out of forty (40) QC immediately before any onset of disability. (This is basically 5 out of the last 10 years)

There are a couple of other Rules for those that are under 31 years old, along with a section for those that are under the age of 24, which require less QCs.

b. The individual insured is called a wage earner (W/E) or number holder (N/H).

c. The date an individual's insured status runs out is the; Date Last Insured (DLI). You must prove your Disability begins prior to this date.

d. The amount an insured individual receives monthly is the Projected Income Amount (PIA) and is based on; A formula that uses the individual's work earnings and the number of years of the earnings. Currently, the PIA increases via an annual cost of living adjustment, (COLA).

e. There is a Family Maximum: Members of the family may receive benefits (auxiliary), that are divided among the Wage Earner's spouse, any children under the age of 18 unless the children are still going full time to high school but, the benefits will end no later than 19 years of age.

2. DAC: Disabled Adult Child

The child of an individual insured and entitled to DIB must be at least 18 years old and have a Disability that occurred before his/her age of 22 or a child of a Social Security Retirement recipient, or have a parent who is deceased.

3. DWB: Disabled Widow/Widower Benefits

The widow/widower must have a Disability which occurred within 7 years of his/her insured spouse's death and must be at least 50 years old.

(However, the 7 year period can be accumulated if, the widow/widower drew benefits because they were a parent of a

child under 16 years of age prior to and after the death of their spouse.)

C. FIRST MONTH OF ENTITLEMENT:

Your entitlement starts at the later of either; the 5th month following the onset date of your disability; (You must be disabled for five (5) months before you are eligible for benefits) or, 12 months before your filing date. (Please make note that; it is 5 full months so, if your Alleged Onset Date (AOD) is on the 15th of the month or later, the start date for the waiting period is the following month.)

D. MEDICARE:

Beneficiaries of Title II may receive Medicare 24 months after their first month of entitlement.

There is no waiting period for individuals with (ALS) Amyotrophic Lateral Sclerosis or (ESRD) End Stage Renal Disease requiring Dialysis or a Kidney Transplant.

II. SUPPLEMENTAL SECURITY INCOME (SSI)

Sometimes called Title 16 or (SSID) 42 U.S.C SS 1381 et seq; 20 C.R.F. pt. 416.

- A. SSI or SSID: Supplement Security Income is based solely on financial need and is funded by general Federal Tax Revenues.
- B. Non-medical requirements: The Social Security Administration (SSA) has a specific Chart; the Break Even Points Chart that takes into consideration the income from the spouse and children. They will consider any income in the household. SSA looks at income and resources to determine a monthly monetary amount.

A threshold of \$ 2,000.00 for an individual, and \$ 3,000.00 in resources for a couple's case is allowed. (Not all resources are included such as; a car or your home, \$ 2,000.00 worth of home goods and personal effects, and a burial space.

- C. ENTITLEMENT:
Your entitlement to SSI starts the month after the month of filing.(There are no retroactive benefits in SSI.)

D. MEDICAID:

Beneficiaries of SSI are generally entitled to Medicaid as of the month you filed your claim.

III. DEFINITION OF DISABILITY:

The Federal Law requires this strict guideline definition of a disability.

SSA pays benefits to individuals that; cannot work because of a medical condition that is expected to last at least twelve (12)months or that eventually results in death.

An individual must be unable to work because of physical and/or mental impairments, and unable to perform work that he/she was able to perform in their previous work history or, any other work in the national economy.

Impairments: Must be diagnosed by medically acceptable clinical and laboratory physicians or technicians for any anatomical, physiological or psychological abnormalities.

CHAPTER TWO

HOW DO I MEET THE EARNINGS REQUIREMENT FOR SOCIAL SECURITY DISABILITY?

GENERALLY, YOU MUST MEET TWO (2) SEPARATE EARNINGS TESTS.

(1) The “recent work” test is based on your age when you became disabled.

(2) The “duration of work” test shows that you worked long enough based on Social Security requirements.

RULES FOR THE “WORK NEEDED” TEST

If you become disabled:

You need:

During or before the Qtr you turn 24 years old.

18 months of work during the 3 year period ending with the QTR your disability began.

If in the QTR after age 24 but before the QTR you turn 31 years old.

Worked “half the time” for the time starting with the QTR after you turned 21 and ending with the QTR you became disabled.

Example: If you became disabled in the QTR you turned 27; you need 3 years of work out of that 6 year period ending with the QTR you became disabled.

During the QTR you turn 31 or older

Work 5 years of the 10 year period ending with the QTR your disability began.

CHAPTER THREE

HOW TO APPLY FOR SOCIAL SECURITY BENEFITS

**THERE ARE THREE WAYS YOU CAN
APPLY FOR DISABILITY BENEFITS.**

1.(Recommended.) You can apply on line at www.socialsecurity.gov or www.ssa.gov.

2.You can call 1-800-772-1213 and make an appointment to go into your local Social Security Office for a face to face interview or,

Set an appointment for an agent to take your information over the phone. (The phone interview should take about an hour. If you schedule an appointment, they will send you a Disability Starter Kit to help you get ready for your interview.)

If you are hard of hearing, call 1-800-325-0778.

The Disability Starter Kit also is available at www.socialsecurity.gov/disability.

3. You may contact this office and meet with a legal professional to assist you with the application process all the way through to the end result, your disability award.

IF YOU ARE APPLYING ON LINE;

BELOW IS A DISABILITY CHECKLIST FOR ADULTS

It will help you gather the necessary information you will need to fill out the application and Disability Report.

DISABILITY APPLICATION CHECKLIST

√ Names and Dates of Birth of your minor children

√ **Your (DD 214) information for all periods of active duty in any of the Military Branches of the United States.**

√ **Your W-2 Form or, 1040, Schedule C and SE if you were self employed from last year.**

√ **Your Checking or Savings Account Number along with the 9 digit Banks Routing Number. (That's if you want your benefit check Direct Deposited.)**

√ **Certified Copy of your original Birth Certificate, or the Original.**

√ **Your Doctors names, addresses,**

phone numbers and dates of treatment.

DISABILITY REPORT

- They will need; the name and phone number of someone that they can contact who knows of your medical condition so they can help with your claim.

- For all Doctors, Hospitals and Clinics, they will need the dates they treated you; they will need the names, addresses, phone numbers of your doctors for your file.

- The names of the medications you are taking; who prescribed the medicines; the dosage; what it is for; and any side effects you may have.

- Names and dates of any medical tests you

have had and who sent you for the tests.

- **Jobs you've had in the last 15 years before you were unable to work. (Include the dates of those jobs if possible.**

- **Any claim number, name, address and phone number of any Insurance company; you may have filed an insurance claim for or, any Workers Compensation claims you filed.**

CHAPTER FOUR

WHEN SHOULD I APPLY FOR SOCIAL SECURITY DISABILITY

YOU SHOULD APPLY AS SOON AS YOU BECOME DISABLED.

The process can take a very long time to adjudicate; both your initial application for Disability and on Reconsideration, (3 to 5 months each stage)

You will need to supply the Social Security Administration the following documentation:

- 1. Your Social Security Number.**
- 2. Your Birth Certificate or your Baptismal Certificate.(Original or Certified copy.)In some cases of military service, your DD-214 is required.**

In addition to this basic information; there are Forms you will need to fill out.

- 1. One Form that gives the SSA**

authorization to request from Doctors, Hospitals and other health care Professionals your private medical history.

2. Another form collects information about your medical condition and how it effects your ability to perform gainful work.

3. Another form is about your work history.

**DON'T DELAY YOUR APPLICATION FOR
DISABILITY.**

**IF YOU CANNOT GATHER ALL THE
REQUIRED INFORMATION TOGETHER
QUICKLY; WE AT BERKE LAW CAN HELP YOU
GET THE INFORMATION YOU NEED.**

**IF I'M FOUND DISABLED, CAN MY
FAMILY GET BENEFITS ALSO?**

Certain members may qualify based on their work history. It includes:

Your Spouse: if she/he is at least 62 years old.

Your Spouse: if she/he is caring for your child who is younger than 16 years old or disabled.

Your unmarried children, any adopted children and in "some cases, grand children and step children" if they are dependant upon you. The children must be younger than 18, or 19 if in secondary school full time.

The unmarried child must be 18 or older if, he/she has a disability that started before age 22.(The child's disability will be defined as meeting the same definition as for adults.)

In some cases, a Divorced spouse may obtain benefits based on your earnings if; he/she was married to you for a least 10 years and not currently married and is at least 62 years old.

(Note: The amount of benefits paid to he/she does not reduce your benefits or the benefits of your current spouse or children.)

DO OTHER PAYMENTS I RECEIVE AFFECT MY BENEFITS:

If you are receiving other Government Benefits; Worker's Compensation or any other Disability payments; your SS disability benefits amount might be affected.

Publications that clarify the above situation are Windfall Elimination No.05-10045 and No. 05-10007 Government Pension Offset. (Publications are at the SSA website.)

WHAT HAPPENS IF I TRY TO WORK AGAIN:

If you are receiving S.S. Benefits, the SSA has Rules (Work Incentives) that allows you to try working again. It allows you to test your work abilities and still receive benefits.

You can also receive help with further education, rehab, and training in order to assist you in returning to work. (Publication No. 05-10095 and Publication No. 64-030.)

CHAPTER FIVE

WHO DECIDES IF I AM DISABLED

**THE SOCIAL SECURITY
ADMINISTRATION WILL REVIEW YOUR
INITIAL APPLICATION TO SEE IF YOU
MEET THE BASIC REQUIREMENTS FOR
DISABILITY BENEFITS.**

They will check the basics; did you work enough years to qualify, and they will evaluate your past work history.

If you meet those requirements; they will send your Application to the Disability Determination Service Office in the State you live in.

Doctors and Disability specialists in the State Agency request information from your treating Doctor(s) about what your medical conditions are and when they began.

Most importantly, they will want to know how your medical condition(s) limit your daily activities, and your ability to do work related functions, such as walking, sitting, standing, and

lifting. Also, if you can remember instructions, deal with people, and stay focused. At no time does the State Agency ask your Doctor if you are “disabled”.

They will use any and all Medical Evidence from your Doctors, Hospitals and any other institutions where you were treated; What your Doctor’s tests have shown; What treatment they have prescribed. The SSA will consider all the facts in your case, and will make a determination after their assessment is complete.

The State Agency may need more information in order to make a determination in your case. They may ask you to go to see one of THEIR Doctors for an exam. This is called a Consultative Examination (Social Security will pay for the Consultative Exam.)

BEFORE YOU GO FOR ANY EXAMS REQUESTED BY SSA OR THE STATE AGENCY, YOU WILL BE ASKED TO COMPLETE AND RETURN QUESTIONNAIRES AND FORMS TO THE SSA OR STATE AGENCY; BEFORE YOU DO THIS YOU SHOULD CONSULT BERKE

LAW OFFICE.

The State Agency completes the Disability Decision for the Social Security Administration AT THE FIRST TWO DETERMINATION LEVELS:

If you are denied at the first two levels, the next step will be to file a Request for a Hearing with the Administrative Law Judge.

HOW THEY MAKE THEIR DECISION

THEY USE A FIVE (5) STEP PROCESS TO DETERMINE IF YOU ARE DISABLED.

Step 1: Are you currently working?

If you are working and your income average is more than a certain amount per month; they will not consider you disabled.

That specific amount changes every year. Go

to; <http://www.ssa.gov/oact/cola/sga.html> for the updated amount.)

If you are not working or, your monthly income averages the current established amount or less; the State Agency will then look at your Medical Condition.

To sum it up; whether working or not working, your average income cannot be equal to or exceed the established income threshold and your claim may stop at that point without further review.

Step 2: Is the Medical Condition you claim, severe?

For the Agency to determine if you are Disabled; your medical circumstances must drastically limit your physical or mental ability to do the most basic of work for at least one year; such as walking, sitting and remembering the assigned work.

If your condition isn't that severe, the Agency

won't consider you disabled. If your condition reaches the "severe" criteria, the state agency goes on to Step Three.

Step 3: Is your medical condition one of those on the SSA "List of recognized Impairments"?

The State Agency has the List of Medical Impairments "The Listings" that is undeniably severe and, by that they generally mean that; you would be classified as disabled if your condition meets ALL of the criteria as defined by law.

If individual or collective Medical/Mental conditions are not on this list; the Agency tries to determine if your condition is: as severe, or "equal" to any condition on the list.

If your medical condition meets or equals that of a listed severe impairment, the Agency will determine that you are disabled.

If your Condition does not meet or equal the criteria, the Agency will determine what your Residual Functional Capacity (RFC) is based on THEIR review of your records. An RFC is what

your maximum ability is to sit, stand, walk, lift on a regular basis, and should include an assessment of how you can function. After the RFC is complete - the Agency moves on to Step Four.

Step 4: Can you do the same kind of work you did in the past?

At this point, the Agency decides; if your medical condition stops you from being able to do the work you once did.

If it does not, the Agency will decide that you are not disabled, and the Agency moves on to Step Five.

Step 5: Are you able to do any other type of work?

If you are unable to do the work you did in the past, the Agency investigates to see if you are able to do other work.

It completely evaluates your medical condition, your education, your age, your past work experience and any specialized skills you may have that; could be used to do other work.

If you cannot perform other work, the Agency will determine that you are disabled.

If you are able to do other work, the Agency will determine that you are not disabled.

When a Decision is reached by the State Agency; the SSA will notify you of their decision.

The SSA will notify you via U.S. mail. If your application for Disability is approved, you will receive a Notice of Award, that will state the amount you are entitled to and when the payments start.

CHAPTER SIX

**WHAT IF MY CLAIM WAS DENIED AND
I DISAGREE WITH THEIR DECISION ?**

YOU CAN APPEAL THEIR DECISION AND SHOULD:

FIRST OFF, ALL IS NOT LOST. An easy but accurate three word sentence should apply to you: DON'T GIVE UP!

Most people are denied the first time around, at the initial application level.

Contact us at Berke Law Firm immediately when you receive a denial letter. It's important that we get your appeal to the SSA before the 60 day allotted time for you to appeal their decision.

You have the right to have an Attorney represent you in any dealings with the Social Security Administration.

The Appeals Process is explained in the Publication No. 05-10041), and is available from SSA.

Your Right to Representation is explained in: Publication No. 05-10075), from the SSA.

DISABILITY APPEALS PROCESS:

As a general rule in most states; the Request for Reconsideration Disability Report Appeal Form are the documents to file your appeal.

This can be done online or at your local Social Security Office.

The Appeal must be filed within 60 days from the date of your Denial Letter.

Reconsideration determinations are made by the same State Agency that Denied your claim the first time.

The Reconsideration process normally takes about 90 days to arrive at a decision.

WHAT HAPPENS IF THE RECONSIDERATION REQUEST IS DENIED:

Should you receive a Denial Letter called, (Notice of Reconsideration); The next step is you must request a “hearing” with an Administration Law Judge (ALJ).

Your hearing will not be held before the State Agency that has sent you a denial letter.

Your hearing will be handled by the SSA in the

Office of Disability Adjudication and Review, or (ODAR). If it's determined that a hearing is necessary, the hearing will take place before an Administrative Law Judge (ALJ).

An ALJ hearing is a favorable point for you because the Administration Law Judge, "is not bound by any prior decisions" made by the State Agency/SSA.

It is "your responsibility before your hearing to submit to the SSA any updated Medical records or new reports to help support your claim.

The wait time for a hearing depends on which Hearing office has your file. The wait time could be in the range of six (6) months to as much as two years in some parts of the country.

(Patience is paramount at this phase.)

My office can help gather your evidence to help put you in a better position to prevail, in your claim. We will contact your treating physicians, in most cases, to see if they will fill out forms to help you obtain the evidence needed to WIN your claim.

CHAPTER SEVEN

WHAT HAPPENS AT MY ADMINISTRATIVE LAW JUDGE HEARING

THIS IS A RECAP OF WHAT WOULD NORMALLY OCCUR AT YOUR HEARING PER THE SSA.

- **The Administrative Law Judge will explain the issues surrounding you Claim.**
- **The ALJ may request that you and any witnesses you may have brought to the hearing answer questions .**
- **The ALJ may also request Doctors or Vocational experts to appear at the hearing for their testimony.**
- **You will be sworn in under Oath. The hearing is informal, but it will be recorded to ensure accuracy for the ALJ to make a fair decision.**
- **Your Representative or you may question any witnesses and submit any evidence.**

ONCE THE HEARING IS COMPLETE:

- **The ALJ will formulate and issue a written decision after studying all the evidence. This can sometimes take as long as 6 months time. An average wait time for the decision is about 90 days**
- **The Judge then sends you and your Representative the written decision by mail.**

THE COMPLETE PROCESS:

You have been waiting for a very long time for this hearing. Your SSA hearing is tomorrow, the big day is here.

Your Hearing is the single best chance for you to impress the ALJ with your evidence and win your Disability Claim. (Remember, the ALJ is not bound by previous decisions.)

IS THE HEARING IN A FULL FLEDGED COURTROOM WITH A GALLERY OF ON-LOOKERS?

No, SSA hearings are very informal and are usually held in a small conference room that accomadates only the ALJ, a hearing assistant to the ALJ, you and your representative; and any witnesses pertaining to your case. (Doctors, etc.)

There will be an audio recorder and microphones for taping the hearing testimony. SSA hearings are not open to the general public.

Coincidentally, the small informal feel of the room is an opportunity for you to establish a rapport with the Judge. Just relax and focus on why you are there.

IS THERE A SPECIFIC PLACE WHERE I WILL SIT?

You generally will sit facing the Judge who will identify him/her self and introduce their assistant and the witnesses.

The Judge, or perhaps your legal representative will recite the issues of your case. Then the ALJ will most likely ask you; (or your representative if you have one with you), if there are any objections to the Exhibits in your file.

You or your representative will have the opportunity to offer the Judge any new medical records, or information about your Medical Condition. (It is very important that you/your representative have up to date information on your condition, if not, the Judge may postpone your hearing to a later date.)

Assuming there are no objections and your records are up to date; as in a normal Courtroom, the Judge will swear you in to tell the truth. The Judge may ask your legal representative if he/she wishes to give an opening statement. (Some Judges do not offer this option.)

YOUR TESTIMONY:

Each Judge has a different hearing technique concerning Testimony and Questions. Generally the Judge will pose most of the questions.

He/she probably will ask your Representative if he/she has any follow up questions.

Some Judges allow your Representative to ask all the questions at the hearing.

In your direct examination, these are the subjects they will cover;

- **Your background information; age, education, marital status, where you live and is it a home or apartment, who you live with, etc.**
- **The past work you performed: carrying, lifting, management or supervisory roles, etc.**
- **Specific physical or mental problems and activity limitations.**

IMPORTANT THINGS YOU MUST REMEMBER WHEN TESTIFYING:

- **Always tell the truth.**
- **Keep your answers brief and to the point.**
- **Do not ramble on or try to over explain.**

- If you are like most people, you will be nervous and not thinking quick enough so;

You must practice on specific limitations you have. Think of it as a small informal play, rehearse your lines as it applies to your medical conditions you have.

- You must be very descriptive when you talk about the pain you suffer from and give specific examples.

Rather than say;

It really hurts all the time. You might say; I take my pain medication as prescribed, but it takes over an hour to work but even then, my legs still have that stinging throbbing pain that just doesn't go away. I can't sit or stand to ease the pain. The pain medication usually

justs put me to sleep.

- **Since it may take some time in the hearing, you may need to stretch your legs and the Judge will allow a break for no more than 15 minutes for all in the hearing.**

- **Always reply when you are asked a question with yes or no or I don't know. (Leave the slang grammar outside the hearing. No nodding or shaking your head and please no profanity, etc.**

- **Dress as you normally would, comfortably and bring all your bottles of Medicine, as the Judge might want to look at them.**

- **Your attitude should be; if I could work I would. I liked my job and it kept me busy and it allowed me to be useful and productive for me and my family.**

- After hearing your testimony, the Judge will hear from the expert witnesses. Your representative will be given the opportunity to pose questions to the witnesses, as well.

- The Judge may or may not ask if you or your representative have any other comments. If so, he/she will hear them. The Judge will then draw the hearing to a close.

As a general rule, the Judge will not announce his decision at the hearing.

The Judge will, most likely, notify you and your representative by sending a copy of his/her decision by mail.

SEVEN THINGS YOU NEED TO DO TO HELP SECURE YOUR SSA BENEFITS:

(1) YOU MUST TREAT WITH DOCTORS:

If you have not been to a Doctor for your condition, there will be no Medical Record for your SSA claim. You must go to the Doctor prior to you filing a SSA claim.

You should also see a Doctor while you are waiting for your SSA Claim to be processed.

If you do not have Medical Insurance or loose your Medical Insurance before your Claim is approved; Seek treatment at the hospital, your local health department, or any Free Clinic.

(It may not be ideal but, some treatment is better than none.)

(2) SEE A DOCTOR FOR ANY AND ALL AILMENTS:

You must see a Doctor. Obviously some seemingly un-related conditions may actually exacerbate the primary condition you seek SSA benefits for. (Each time you see a Doctor, your

Medical Records get larger.)

(3) YOU MUST GET COPIES OF YOUR SCHOOL RECORDS AND ANY AND ALL OF YOUR MEDICAL RECORDS:

Copies of School Records are reviewed by the SSA, ALJ and any Appeals Judge to determine your education level, to decide if you have enough knowledge to perhaps perform other work activities rather than just your previous work.

Your Medical Records will be supplied to you by your Doctor's Office and are "absolutely needed" by the SSA, ALJ and any Appeals Judge.

(4) IF YOU HAVE AN ATTORNEY, ASK HIM/HER TO SUPPLY YOU WITH FORMS TO GIVE TO YOUR DOCTOR. (IE:NO WORK LETTERS, RFC FORMS AND LISTING QUESTIONAIRES.)

(5) DO NOT HAVE ANY GAPS IN THE TREATMENT OF YOUR MEDICAL CONDITION:

If you do not see your Doctor regularly, the SSA may think your condition is not as serious as you claim.

You should seek treatment a minimum of every 2 months or less. If not, the SSA may conclude that if you were in pain surely you would seek regular treatment.

(6) BEFORE THE HEARING, FAMILIARIZE YOURSELF WITH THE LOCATION OF YOUR HEARING:

On one of your daily treks, drive by the hearing office so you will know exactly where it is and how to get there.

**(7) YOU MUST BE RESPECTFUL TO THE
JUDGE AT ALL TIMES:**

Your back is killing you, you can't walk or the pain is unbearable; you may not like who's asking the questions or how they are asking them, but you must remain calm and patient. No outbursts of disrespect.

**THE LATEST INFORMATION FOR YOU
TO CONSIDER:**

A RECENT SURVEY OF 1,589 ADMINISTRATIVE LAW JUDGES (ALJs) SHOWS AMONG THE 50 ALJs WITH THE WORSE APPROVAL RATE.

THEY WERE ONLY APPROVING FROM 4.18% to 23.52% OF THE CASES THEY RULED ON. (A DISMISSAL 1 IN 4 CASES APPROVED AT THE HIGH END OF THE SCALE AND MUCH LESS ON THE LOWER END.)

ADDITIONALLY, IN THE MARCH 2013 DRAFT OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES THAT WAS COMMISSIONED AND FUNDED BY THE SOCIAL SECURITY ADMINISTRATION DETERMINED THAT;

THE 2009 YEAR HAD A 61% APPROVAL ALLOWANCE RATE FOR ALJs, BUT WAS REDUCED TO 41% FOR 2012. TO MAKE MATTERS WORSE, AS OF THE FIRST QUARTER OF 2013 THE APPROVAL ALLOWANCE RATE STOOD AT 43%.

(NOT MUCH OF AN INCREASE FROM 2012.)

THE LAWS HAVE NOT CHANGED. THE STANDARDS FOR DISABILITY HAVE NOT CHANGED; NO DOUBT SUBTLE PRESSURE ON THE ALJs TO REDUCE THEIR APPROVALS DUE TO FISCAL CRISIS PROBLEMS IN THE GOVERNMENT MUST BE THE CULPRIT.

**THE NET RESULT IS; EVERY WORK DAY OF
THE WEEK 580 CLAIMS ARE NOT APPROVED.
FOR FISCAL YEAR 2013 THAT'S 150,000
DENIED CLAIMS MORE THAN WERE IN 2009.**

CHAPTER EIGHT

WHAT IF I AM DENIED BY THE ADMINISTRATION LAW JUDGE

THERE ARE BASICALLY FOUR OUTCOMES:

1. FULLY FAVORABLE DECISION:

This occurs when the Judge has approved you for disability and you are entitled to receive monthly benefits as far back to the point in time that you state you became disabled through the present.

If the ALJ requests and you agree to alter the “on set date of your medical condition” or you agree to receive benefits for only for the time you were unable to work; you can also receive a “partial favorable decision”.

2. PARTIALLY FAVORABLE DECISION:

The Judge does not grant your full request but does grant benefits for a partial period you claimed.

The ALJ may have decided that you became disabled at a later date than your claim specified. Or, the Judge may find you are only eligible for what is called a “closed period”.

The Judge will provide his/her “rationale” as to why he/she arrived at the decision and, why you were denied benefits that you originally claimed. You CAN appeal this decision further.

3. UNFAVORABLE DECISION:

The Judge has made the determination that you are not approved for the Benefits you requested for the period of time you requested them for.

The Judge should provide complete details about what evidence swayed his/her decision not to grant you benefits.

It may be testimony by your Doctor or other professional witnesses or that your credibility

was lacking. In any case, the ALJ must explain why your Doctor's opinion was not accepted and/or why your claim was not credible.

Once the claim has been approved or denied, it is highly unlikely that it will be reversed, but it is a possibility. At times, the Appeals Council will make their own motion review for quality assurance.

4. DISMISSAL:

A dismissal is generally issued if:

You fail to show up for the hearing; if you filed a late "Request for a Hearing", and the Judge has decided that your did not have good cause; Or, you voluntarily withdraw your request for a hearing;

IF YOUR CLAIM IS DISMISSED:

The ALJ must be assured that he/she has followed the SSA rules and regulations as it is likely that you would appeal the decision.

WHY DOES IT TAKE SO LONG FOR A DECISION:

In general, decision are made within 90 days of the hearing, but the Judge does not have a time limit that he/she must abide by. Decisions are rendered when the Judges are ready to issue them.

A good majority of the decision is a form but there is complicated writing and summarizing of your medical information as it pertains to your Administrative file.

The average number of pages in your file exceeds 350 pages. The hearing recordings must also be converted to a written form and summarized.

The ALJ that handles your hearing is expected to handle a few hundred such cases every year. In order to perform as expected on that many claims; the Judges have less than a day on each SSA claimant such as yourself.

Now is a perfect time for me to remind you of the patience you must have while your claim is being processed.

IF DENIED BY THE ALJ SHOULD I APPEAL MY CLAIM TO THE APPEALS COUNCIL:

Most individuals can automatically appeal their claim to the Appeals Council. Many Lawyers shy away from such cases unless they can prove the following.

- **The ALJ misapplied a particular law in error to one of the standards.**

- **The finding by the ALJ was not supported by substantial evidence.**
- **There may be a procedural error that might affect the general population's interest.**

A good majority of these Appeals Council cases deal with errors in the law. Many of these cases will be sent back (remanded) to the hearing Judge for a second review.

SHOULD I APPEAL TO THE APPEALS COUNCIL:

You must discuss the situation in detail with your Lawyer or Representative to see if it is a good idea.

You must also understand that this particular process may take longer than one year. The SSA provides you with some steps to expedite the Appeals Council review at; www.ssa.gov.

- **You generally only have 60 days from the date of your Notice of Decision to file the Appeal.**
- **If you miss the deadline, you must explain the reason for missing it in your request.**
- **Include any comments or evidence you have for the AC to consider.**
- **We recommend that you do not make multiple inquiries for your file's status with the SSA, while your claim is reviewed by the Appeals Council.**

You can verify through the SS Office that they have received the request but that is different from inquiring about the disposition of your appeal.

THE APPEALS COUNCIL, REQUESTING A REVIEW:

The Council operates like a higher Court in the legal system rather than like the ALJ.

They determine if the decision was made correctly by the ALJ.

They also can make the decision to send your file back (remand) to the ALJ who made the original decision for further consideration and/or to correct errors made in the decision.

They can also fully approve your disability Claim by overturning the ALJ decision but this is a very unusual occurrence.

FACT: In the Fiscal Year 2013, of the 176,000 Request for Review dispositions: 77% were Denied; 17% were Remanded back to a Judge, 4% were Dismissed; and only 1% were Fully Favorable. Less than 1% were Partially Favorable, and less than 1% were Unfavorable.

Claimants now prevail in merely 18% of Request for Review's - (remands + partially favorables + fully favorables).

IS IT WISE TO FILE A WHOLE NEW CLAIM?

Almost a year of time waiting for the Appeals Council's decision may prompt some claimants to forgo the wait and file a whole new claim.

I recommend that you FIRST consult with an experienced attorney, prior to filing a "new claim".

Is your understanding sufficient enough on how the SSA makes their disability decision?

Do you know what your functional abilities are as it pertains to your work?

Are you aware in all aspects as to why your previous claim was denied?

Are you completely familiar with all of your Medical Records and what's in them?

Are you completely aware of how to improve your chances to gain a Fully Favorable Decision the second time around?

If you answered No to any of these questions, you should to call my office before you proceed, for a FREE consultation.

CHAPTER NINE

WHAT IF I'M DENIED AGAIN

WHAT IF THE APPEALS COUNCIL REJECTS MY CLAIM:

In essence you only have three options left. It is very important that you discuss your options with an experienced attorney. Here are your options:

- 1. Give up on your Claim. (I do not recommend doing that.)**
- 2. You may file a brand new Claim. (This may or may not be a good idea, you should consult with an Attorney.)**
- 3. You may file a Civil law suit in Federal Court against the Commissioner of Social Security.**

My office handles Federal court cases throughout the State of Florida.

Very few SSA appeals are filed in a District Court these days. However, when the SSA has made an error of law then it makes sense to file a Law suit.

The SSA will not assist you in preparing for an appeal in Federal court.

A Federal court will not permit a non-lawyer to assist you. It is strongly recommended that you obtain legal representation in this case. You must have an experienced Lawyer explaining why the SSA was wrong in their decision to deny your claim.

If you file the suit and appeal the denial of your claim, you must follow the Federal Court Rules or you will risk losing and/or having your Complaint dismissed.

IN WHAT TIME FRAME MUST I FILE A CIVIL ACTION:

You have 60 days from the date of your Appeals Council decision. You must file a Civil Complaint with the United States District Court in your area. (A Complaint is a brief statement of the facts and your allegations that quickly informs the Court as to what your case is about.)

HOW MUCH DOES IT COST TO FILE THE CIVIL ACTION:

You can request that the Court waive the civil filing fee if you cannot afford it.

Generally, the amount is based on the area you live in - but a good estimate is about \$400.00.

HOW LONG DOES THE FEDERAL COURT TAKE TO PROCESS THE CASE:

Normally as with all the SSA processes, it can generally take a number of months, up to and over a year.

WHAT HAPPENS ONCE THE ACTION IS FILED:

The Court will issue a summons for the SSA, which must be officially served to the Commissioner of Social Security, and you must provide them with a copy of the Complaint.

These 2 items must be served at the SSA's designated locations that are called, the Office of the General Council (OGC). You must find the local address where you can file the complaint in your area.

After being served, the SSA's attorney will file an answer. Their answer is a brief explanation of why they feel the AC and the SS Judge were accurate in their denial of your claim.

You will then need to file an Opening Brief with the Court.

WHAT IS AN OPENING BRIEF:

It is a legal document that explains your position in some detail for the Court. It would analyze the Judge's decision and it is designed to sway the Federal Judge to your side based on failure of the SS Judge to properly rule in your favor based on Law.

Many Federal Appeals can be won or lost based on how persuasive your Opening Brief is. Therefore, it is of the utmost importance to get it right the first time.

WHAT HAPPENS AFTER THE BRIEFS ARE SUBMITTED:

The Attorneys for the SSA have an opportunity to file a “response brief” stating why they feel you are wrong in your Brief.

Following their response brief, you have the opportunity to file a “Reply Brief” to defend your previous brief and reiterate your claim as to the errors on the part of the ALJ.

After all this jockeying back and forth; the Federal Judge will make his/her decision. (Again, this process can take almost one year.)

WHAT ARE THE DECISIONS THE JUDGE MAY DECIDE:

A Federal Court Judge considers all the evidence; and may decide the following:

- **He/she may send the claim back (remand) it to the SS Judge to be reconsidered based on the Federal Judge's belief that perhaps the ALJ did not fully consider certain aspects of the case.**
- **Then a SS Judge (ALJ) may then reconsider your case based on the Federal Court remanding the file back to him/her.**
- **The Appeals Judge may agree with the SS Judge and deny your claim. (*At that point, you could appeal the decision further to the Federal Circuit Court however that approach is very expensive and far more difficult.*)**
- **The Appeals Judge can agree with you and will overturn the SSA's decision and award you the benefits you seek, but this is rare. In most Federal Court cases, a remand back to ALJ for further consideration is a more appropriate course of action.**

CHAPTER TEN

WHAT IF MY CLAIM IS APPROVED:

SOCIAL SECURITY WILL NOTIFY YOU ONCE YOUR CLAIM IS APPROVED:

They will notify you and/or your Attorney by mail.

You will receive a Notice of Award, which will include the monthly entitlement amount and the effective date of your FIRST disability check.

Generally, the date of your first check will be five (5) full months after the date SS finds your disability began, or 12 months prior to your filing date – whichever is later. The maximum amount of past due benefits you can receive is 12 months retroactive from the date you filed your claim.

EXAMPLE:

The Agency determines your disability began

on January 15, therefore your 1st disability benefit check will be paid to you for the month of July of that year.

The SSA, pays benefits “the following month when they are due”. You will receive your benefit check for July in August, your check for August in September, and so on.

THE AMOUNT OF YOUR MONTHLY BENEFIT IS BASED ON AN AVERAGE OF YOUR HIGHEST 15 YEARS OF EARNINGS.

YOU WILL RECEIVE INFORMATION FROM THE SSA ABOUT YOUR BENEFITS AND INSTRUCTIONS OF WHAT CHANGES IN YOUR DISABILITY YOU MUST REPORT TO THE SSA.

*You also will receive **What You Need To Know When You Get Disability Benefits.** (Publication No.*

05-10153) which gives you important information about your benefits and tells you what changes you must report to them.

HOW WILL THE SSA CONTACT YOU:

Generally, they contact you by mail. Occasionally, they will call you on the phone when they want to discuss your benefits, or need additional information to process your claim.

WHEN DO I GET MEDICARE:

You will get Medicare coverage automatically after you have been disabled for two years. (This starts with your first month entitlement, and Medicare begins after 24 months.)

WHAT DO I NEED TO KNOW ABOUT WORKING:

After you start receiving Social Security disability benefits, you may want to try working again.

Social Security has special rules called work

incentives that allow you to test your ability to work and still receive monthly Social Security disability benefits.

You also can get help with education, rehabilitation and training you may need in order to work.

If you do take a job or become self-employed, it is important that you tell the SSA about it right away.

They need to know when you started or stopped working and if; there are any changes in your job duties, hours of work or rate of pay.

You can call SSA toll-free at 1-800-772-1213.

If you are deaf or hard of hearing, you may call their toll free number at 1-800-325-0778.

For more information about helping you return to work, ask for *Working While Disabled. How We Can Help.* (Publication No. 05-10095.)

A Summary Guide to Employment Support

for Individuals with Disabilities Under the Social Security Disability Insurance and Supplemental Security Income Programs (Publication No. 64-030). You can also visit their website, www.socialsecurity.gov/work.

THE TICKET TO WORK PROGRAM:

Under this program, Social Security and Supplemental Security Income disability beneficiaries;

Can get help with training and other services they need to go to work at no cost to them.

Most beneficiaries will receive a “ticket” that they can take to an employer of their choice who may offer the kind of work the beneficiary may be able to perform. (To learn more about this program, ask the SSA for *Your Ticket To Work*. Publication No. 05-10061).

CLOSING STATEMENT

WITH THE HIGHER DENIAL RATE, AND THE REDUCTION OF FUNDING DOLLARS BY THE GOVERNMENT; THERE IS NO BETTER REASON FOR YOU TO HAVE AN EXPERIENCED ATTORNEY AT YOUR SIDE, FIGHTING FOR YOUR RIGHTS. DON'T GO IT ALONE, CONTACT BERKE LAW FIRM.

The enormous amount of legalities you will have to deal with is not for the faint of heart. Many individuals that attempt to go it alone wish they had the benefit of a legal representative on their side when the SSA and the Judges denied their claim.

As you have read, there are many options that my office can pursue on your behalf.

I will personally go over the details of your Hearing procedures and I will answer the very important questions you have about your case.

BILL BERKE

**IN YOUR TIME OF LEGAL NEED, GIVE BERKE
LAW THE OPPORTUNITY TO ASSIST YOU IN
YOUR DISABILITY CLAIM.**

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