

Helpful Suggestions for Appealing a Denial of Benefits



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Introduction

I hope that the disappointment and frustration you felt upon receiving your denial letter have passed, and that 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 have a lot of company. 65% of applicants are rejected at the initial level. In other words, 2 out of 3 people who believed themselves 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 good news is that 55% of claimants who receive a hearing will be awarded benefits.

The disability evaluation system is dysfunctional in that way—most applications are rejected and most 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 of these statistics 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 an excellent chance of being awarded benefits.

To help you win, below are 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. But 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 that 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.

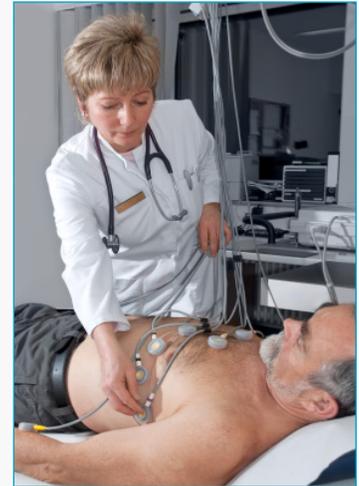
State agency decision-makers also tend to apply specific formulas found in state agency manuals to determine residual functional capacity (RFC) for certain medical impairments, thus treating all claimants with similar medical findings the same. Few of the state agency formulas in these manuals indicate 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 capacity for work. ALJs find claimants under age 50 disabled because of 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 a decent portion 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, being on the alert for any anti-benefit sentiment from your doctor, and obtaining fully completed medical source statements from your doctor.

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)—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](#) like the one [provided here](#) are a better way for your doctor to provide helpful information to SSA.

- e. *Get a thorough medical evaluation.* Ensure your doctor has the raw information to produce a complete and detailed medical source statement by providing him or her details of every impairment you have. Specify how each condition limits your productive activities. Social Security disability does not require that an injury occur at work, so include all medical conditions, however or whenever they occurred. What counts to SSA is the cumulative limitation caused by all of your impairments combined.
- f. *Continue your medical care.* You might feel that your treatment is not helping. Or maybe you have difficulty affording treatment. But 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 for one month 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. Questions to answer in this diary may be found in [this questionnaire](#).

3. Common Mistakes to Avoid

a. *Inaccurately describing your limitations.* Exaggerating the impact of your impairment will damage your credibility and your claim. So will understating. What is important is that your description of your limitations be 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 re-apply 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 worst one. 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.* 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 done. It is often difficult to prove to SSA that they 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 be expected to result in death. You need not wait 12 months to apply, however. 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 am receiving workers' compensation. Must I wait until workers' compensation stops before applying for Social Security disability? No. You may apply immediately after injury if it looks like your disability will last 12 months and should do so. 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.

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

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. For a detailed list of what a disability attorney does on a typical case, [click here](#).

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?

What questions will I be asked by a disability law office? When calling a lawyer, begin by providing the status of your claim (applied with no answer yet, application denied on ___ date, appealed with no answer yet, appealed and denied on ___ date, etc.). Be prepared to summarize your prior work experience, impairment, and medical treatment. You will also be asked your age, highest grade completed, the date you last worked, and the reason SSA gave for any denial.

Conclusion

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

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