

Attorney Training: SSDI Appeals



Foreword

This manual is brought to you by the Enable Project, a coalition that brings together non-profit and social justice organizations and their staff to create channels for integration of people with disabilities within their organizations and movements. This manual is designed to help attorneys prepare to represent people with disabilities when appealing decisions made by the Social Security Administration.

Acknowledgments

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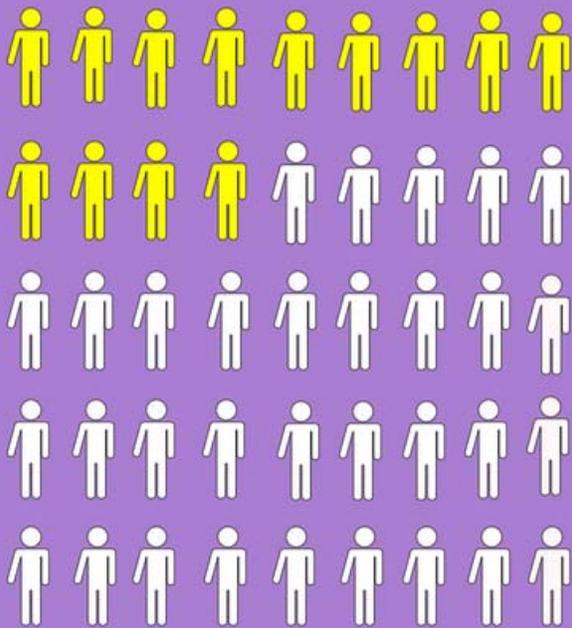
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Disclaimer

Any reference to a specific organization in this manual is not an endorsement of that organization's activities or opinions. Language in this manual is designed to be clear and inclusive as well as to reflect the law accurately. Words may be included to describe legal terms which are not inclusive. The use of these words in this manual is for educational purposes and is not an endorsement.

This manual is meant to provide general guidance. It is not intended to be legal advice and should not take the place of legal advice. When in doubt about how to proceed, seek legal counsel.



Miami

Miami is home to 453,579 people. 29.4% of the city's population has a disability. Roughly 13 people out of every 45 people in Miami has a disability.



20.66 million people live in the state of Florida. 16.5% of those people have a disability.

Florida

In Miami-Dade County, people with disabilities make up 25.7% of the population.



1 in 6 eligible voters has a disability. Only 45.7% of those voters turned out in the 2016 Presidential Election. 19 million did not vote in the 2016 election.

Table of Contents

Disability Etiquette	6
Disability History and Update	6
The Americans with Disabilities Act (ADA)	7
Employment	7
State and Local Government	8
Access to Public Accommodations	8
Disability Language	9
Ask Before Giving Help	11
Service Animal Etiquette	12
Other Tips	13
Understanding SSA Benefits	14
Types of Benefits	14
Qualifying for Disability Benefits	15
Comparing SSI and SSDI Disability Programs	16
Qualifying for SSDI	17
Applying for SSI or SSDI	18
Determining Eligibility for SSDI	19
SSA’s Definition of Disability	19
Substantial Gainful Activity	19
Work Credits	21
Five Step Sequential Evaluation Process	21
General Overview of the SSDI Application and Appeals Process	24
Becoming an Appointed Representative	27
Appointed Representative Definition	27
Qualifications	28
Forms to File	28
Receiving Payment	29

Enrolling in Appointed Representative Services (ARS)	29
Rules of Conduct.....	30
Preparing for the Appeals Process	30
The Appeals Process with Tips for Success	30
Reconsideration	30
ALJ Hearing	32
Appeals Council Review.....	35
Federal Court Action.....	37
Index of Forms	38
Glossary.....	39
Endnotes	45

Note: This manual includes active hyperlinks. Items written in yellow will link you to the definition in the glossary or to other sections of the document. Items that are underlined connect to external websites.

Disability Etiquette

Disability History and Update

During the 1700s and 1800s, people with disabilities had no rights. They were treated like a burden and often sent to live in asylums or jails where they received very poor treatment.

The separation of people with disabilities from those without disabilities continued into the mid-1900s. It was not until 1975 that Congress passed laws to include people with disabilities in the community. One of these laws gave children with disabilities the right to be educated in public schools alongside children without disabilities.ⁱ In 1990, that law was updated, and it is now known as the **Individuals with Disabilities Education Act (IDEA)**.ⁱⁱ

The Disability Rights Movement has fought to improve accessibility and inclusivity for people with disabilities. One of the movement's greatest successes is the Americans with Disabilities Act or the ADA. The ADA was passed in 1990 and established civil rights and protections for people with disabilities. Now people with disabilities can get accommodations to help them have a full and equal opportunity to participate in society and businesses cannot exclude them just because of a disability.ⁱⁱⁱ

Nonetheless, people with disabilities continue to face attitudinal and social barriers that stand in the way of full integration. As a society we have come a long way, but we are not finished yet. Even today, people with disabilities face alarming rates of abuse and discrimination.^{iv}

Here are just a few of the ways that people with disabilities are still discriminated against today:

- Pay-rates below minimum-wage^v
- Electric shock devices to control behavior^{vi}
- Surgeries to manipulate puberty and development^{vii}
- Termination of parental rights^{viii}

This is a brief introduction to the history of disability rights. For more information, see this [web series](#) on the subject.

The Americans with Disabilities Act (ADA)

The **ADA** is a law which protects the rights of people with disabilities and prohibits discrimination based on disability. The ADA defines disability differently than other laws or the way the average person on the street might define it. To be considered a person with a disability under the ADA, a person must have “a physical or mental impairment that substantially limits one or more major life activities..., a record of such impairment, or being regarded as having such an impairment.”^{ix} The ADA addresses employment discrimination, access to state and local government programs, and access to public places.^x

Understanding the ADA is an important part of being a good advocate for persons with disabilities. For a more in-depth explanation of the ADA, see [ADA National Network's ADA Q&A page](#).

Employment

The ADA protects people with disabilities from discrimination in the workplace. This prevents employers from refusing to hire people because of their disability or fire them if they need an accommodation. An employer also cannot ask a candidate if they have a disability or about that disability during a job interview.^{xi}

The person with a disability must still be **otherwise qualified** to get the job. This means that the person can still perform the job's **essential functions**. However, the person may need a **reasonable accommodation**—a change to the usual way a job is done to allow the person with a disability to do the work.^{xii}

If you have a question about reasonable accommodations, visit the [Job Accommodation Network](#).

Some examples of reasonable accommodations are:

- Providing a sign language interpreter for a Deaf person
- Allowing a person to work sitting down rather than standing

State and Local Government

State and local governments cannot discriminate against people with disabilities. This includes access to public transportation, government owned buildings, and programs like Food Stamps. Programs run by the government or programs receiving money from the government cannot have eligibility criteria that exclude people with disabilities. Also, the buildings or locations that house these programs must be accessible. This means that, at a minimum, there must be a way for the person to get into the place, such as a wheelchair ramp and wide doorways.^{xiii}

Compliance with the ADA ensures baseline access, but not full inclusivity. Advocates should focus on accessibility and universal design.

Access to Public Accommodations

A **public accommodation** is a privately-owned entity that is open to the public, such as a restaurant, a store, or a doctor's office. Places of public accommodation must follow the ADA's accessibility rules. Places like private membership clubs and religious organizations are not required to follow these rules, although we should encourage them to be inclusive.^{xiv}

Public accommodations do not have to completely change the way they do business or pay a lot of money to become ADA compliant, but they do have to make some adjustments. For example, most restaurants do not carry Braille menus. A reasonable accommodation in this case is to have a waiter read the menu to customers with visual impairments.^{xv}



Disability Language

As more people with disabilities integrate into the community, introductory language changes to reflect how they want to be addressed. This manual uses People First Language which places the person before the disability. **People First Language** focuses on the person, not the disability. Many people believe that People First Language is one way to show that you accept and respect the person. It can also help change the way society talks about people with disabilities by focusing on what they can do.^{xvi}

The chart below shows the differences between language that puts disability first and language that puts the person first.^{xvii}

Don't Say	Do Say
Differently abled, challenged	Disability
The disabled, handicapped	People with disabilities
Retarded	Intellectual/developmental disability
She is schizophrenic/crazy	She has a diagnosis of schizophrenia OR She has a psychiatric disability
Handicapped or disabled parking/bathroom	Accessible parking/bathroom
He is crippled	He has a mobility disability
She is wheelchair-bound or confined to a wheelchair	She is a wheelchair-user OR She uses a wheelchair
Hearing impaired	Deaf or hard-of-hearing
He's mute	He is unable to speak/ is non-verbal
Normal person	Person without a disability
Dwarf/midget	Little person
Paraplegic	Has paraplegia/ a mobility disability

Nonetheless, you should remember that people with disabilities are a diverse group. We cannot refer to them as one entity or presume to know what each person prefers. Therefore, an individual's preference may be different from the language you see here.^{xviii} Many people in the Deaf and Blind communities, as well as parts of the Autistic community, prefer being called Deaf, Blind, or Autistic. It may be offensive to call them a person who is deaf, a person with a vision impairment, or a person with autism.^{xix} In addition, some disability rights activists refer to themselves as "disabled people." This reflects their belief that they are disabled by societal barriers and their determination to focus on the removal of those barriers.^{xx}

When we regard people as unique individuals with different personalities, life experience, and preferences, we are more likely to treat them with respect. A good rule of thumb is to let the person be your guide and use the language each individual prefers.

You should **not** use some words, even when you see them in official documents. The most extreme example of this is the r-word (retard).^{xxi} You may see government or legal documents with the r-word or with descriptions of "handicapped" or "disabled" people, which may be inappropriate. As an advocate, you should try to use appropriate language even when the law does not.

When advocates need to use potentially offensive legal language, they should explain that the law uses the language even though it is now considered inappropriate.

The r-word is an offensive slur. Commit to ending the use of the r-word by taking the [Spread the Word to End the Word Pledge](#).

Ask Before Giving Help

Always ask before giving help. Sometimes people with disabilities may need help, but other times they may not need or want it. You also may not know what the person needs or how to help him or her.^{xxii} Thinking you know more about a person's needs based on false assumptions is a form of **ableism**.

People with disabilities may not tell you about their disability or their accessibility needs when you first meet them; you can and should ask if they have any accessibility needs. This shows that you are open and accommodating.

Asking about a person's disability can feel uncomfortable. Below are some general guidelines for asking about accessibility needs.^{xxiii}

Don't Ask	Do Ask
What happened to you?	Do you have any accommodation/accessibility needs?
Personal questions (How do you use the bathroom?)	Is there anything we need to know to better serve you?
Let me get that for you.	Can I help you? How would you like me to help you?

Ask general questions about service and access. Do not ask specifics about the person's disability or how the disability happened. This information is personal and not necessary for you to do your job. Ask everyone, and don't make assumptions about who needs what. You cannot always see a person's disability.^{xxiv}

Service Animal Etiquette

Under the Americans with Disabilities Act (ADA), people with disabilities may have a trained service dog (or miniature horse) with them at all times, including in all public accommodations and government buildings. Service animals can only be excluded from places when there is a legitimate safety concern (an operating room may need a sterile environment), it is not housebroken, or it is misbehaving. Misbehaving does not necessarily mean making noise. A service dog, for example, may be trained to bark to alert a person of an oncoming seizure.^{xxv}

A public accommodation can only ask two questions about a service animal:

- Is this animal required because of a disability?
- What work or task has this animal been trained to perform?^{xxvi}

Respect the person's service animal just as you would the person's personal space. Do not distract the animal while it is working by petting it or calling its attention to you, and do not touch the animal without asking its handler for permission



Other Tips

- Treat adults like adults.
- Call people by their names.
- Offer to shake hands.
- Make eye contact.
- Talk to the person, not his or her interpreter or companion.
 - Do not say: “Ask her what she saw” to an interpreter. Say “What did you see?”
- If a person uses sign language and is still signing, that means that he or she is still speaking. Do not talk over that person’s signing. This may mean that you need to look up periodically from your notes so that you do not accidentally talk over the person.
- Ask if you can help and, if so, how.
 - And accept “no” as an answer.
- When working with wheelchair users, sit at their level so they can comfortably maintain eye contact. If that is not possible, stand at a slight distance, so they can make eye contact without straining their neck.
- Have a clipboard handy if you expect the person to fill out forms or provide signatures.
- Don’t ask private questions you wouldn’t ask anyone else.
- Don’t pretend to understand someone if you don’t. Ask for clarification.

When communicating with a Deaf person using an interpreter, the Deaf person may be looking at the interpreter and not you. You should still be addressing and looking at the person you are speaking to.

When using a sign language interpreter, make sure that you’re using the right type of sign language. There are thousands of different sign languages.

- Don’t make assumptions about what a person can or cannot do.
- Don’t lean on a person’s wheelchair.
- Don’t touch a person or his or her mobility devices/supports without permission—including to push someone in a wheelchair.
- Do not pat someone on the head.
- Do not make corny jokes or nicknames.

Understanding SSA Benefits

Types of Benefits

- **Social Security Retirement Benefits:** People who are at least 62 years of age and have worked and paid taxes into Social Security receive benefits based on the amount of time worked.^{xxvii}
- **Title XVI or Social Security Income (SSI):** SSI pays benefits to older people, people who are blind, and people with disabilities based on financial need. This is an income-based/welfare program.^{xxviii}
- **Title II Disability or Social Security Disability Insurance (SSDI):** SSDI pays benefits to disabled workers.* The SSA will look at whether the applicant has worked. In order to receive these benefits, the applicant must be “insured.” This means that he or she worked long enough and paid Social Security taxes. SSDI benefits can only start 5 months after the onset of the disability.^{xxix} This is not an income-based/welfare program.
- **Survivor Benefits:** The spouse of a worker who has died may receive benefits drawn from the earnings record of their deceased spouse.
 - A widow or widower may receive survivor’s benefits if:
 - He or she is over 60 years old,
 - He or she is over 50 years old and has a disability, or
 - At any age if he or she is raising the young child of the deceased disabled worker.^{*xxx}



This manual specifically deals only with applications for adults applying for SSDI benefits. For more information about SSI applications, visit the [SSA website](#).

*This is the language the SSA uses. This is an example of when the law uses outdated language. The advocate should avoid using this phrasing.

- **Veteran's Benefits:** SSA will add qualifying military service to lifetime income, which often raises the retirement benefits for veterans.^{xxxii}
- **Children's Benefits:** Children may also receive benefits through a parent who receives SSDI, retirement benefits, or who has died after working enough to receive SSA benefits. To qualify the child must be:
 - Younger than 18 years old
 - 18-19 years old and still in high school, or
 - 18 or older with a disability that began before age 22.^{xxxiii}

Qualifying for Disability Benefits

- **Adults** — People over 18 years of age may qualify for disability benefits under either SSI and/or SSDI. This is called concurrent eligibility.^{xxxiv}
- **Children with Disabilities** — Children under 18 with disabilities can receive benefits through the SSI program. Information about SSI applications for children with benefits is [available here](#).^{xxxv}

Reminder: This manual only provides information to help adults apply for SSDI benefits. If you are working with a person under 18 years of age or someone filing for SSI benefits, you SHOULD NOT follow the application instructions in this manual.

Comparing SSI and SSDI Disability Programs^{xxxv}

	SSDI	SSI
Source of Payments	Disability trust fund that workers have paid into	General tax revenues
Minimum Initial Qualification Requirements	<p>Must meet SSA's disability criteria.</p> <p>Must be "insured" by money paid into the trust fund by applicant, parents, or spouse</p>	<p>Must meet SSA's disability criteria.</p> <p>Must have limited income and resources</p>
Health Insurance Coverage Provided	Medicare	Medicaid
How Monthly Payment Is Calculated	<p>The SSDI monthly payment is based on the worker's lifetime average earnings. The amount may be reduced based on Workers' Compensation payments and/or public disability benefits.</p> <p>Other income or resources do not affect your payment amount.</p>	<p>SSA starts with the payment amount of the Federal Benefit Rate. Then, SSA subtracts your countable income and adds the supplemental payment from your state, if your state provides one.</p>
Is State Supplemental Payment Provided?	No	Some states pay an extra amount to people who receive SSI. This is called a supplemental payment.

Qualifying for SSDI

- **Adults Under Their Own SSN** — Adults who have worked enough hours and have a disability as defined by the Social Security Administration. For more information on how SSA determines if a person is eligible for SSDI, see the [Determining Eligibility for SSDI](#) section of this manual.^{xxxvi}
- **Disabled Adult Child (DAC)** — In this case, child means the legal daughter or son of someone who has worked enough to qualify for SSDI. If the adult child had a disability before he or she turned 22 and has never worked or is working very little, he may receive SSDI benefits through a parent's Social Security benefits. To be eligible to receive benefits as a Disabled Adult Child, the person must be unmarried, 18 or older, and have a disability that started before age 22. These benefits come from the parent's earnings record. This means that the parent must have worked enough to qualify for SSDI. Adults receiving benefits through their parent's earning record as a Disabled Adult Child must remain unmarried to continue receiving benefits.^{xxxvii}
- **Children Without Disabilities** — Children without disabilities may also receive benefits through a parent's SSDI if they are younger than 18 or are 18-19 years old and still in high school. The parent must be eligible for SSDI in order for the child to receive benefits from the parent's earning record. Children receiving benefits from their parents' earning record must not be married.^{xxxviii}

The focus of this manual is only on adults applying for SSDI. For more information on applying for different benefits, or for applying as child, [see the SSA website](#).

Applying for SSI or SSDI

Applicant Type	SSDI	SSI
Adult with Disability	Yes, if you have a work history OR Yes, if your disability started before age 22 and your parent paid taxes into the SSA system	Yes, if you are low-income
Adult without Disability	No	Yes, if you are low-income
Child with Disability	Yes, if you can draw from your parent's earning record	Yes
Child without Disability	Yes, with a parent who qualifies or has died if you are 18 or younger or a high school student under 19	Yes, with a parent who qualifies or has died if you are 18 or younger or a high school student under 19



Determining Eligibility for SSDI

SSA's Definition of Disability

For the SSA to recognize a disability, the applicant must not be able to participate in any substantial gainful activity. This must be because of a **medically-determinable** physical or mental impairment that:

- Is expected to result in death; or
- Has lasted or is expected to last for a continuous period of at least 12 months.^{xxxix}

Note: The SSA does not recognize temporary disabilities. The duration requirements [listed here](#) must be met.

Note: This definition only applies to adults.

There is a different **definition of disability for children under 18 years**.

Substantial Gainful Activity

Substantial Gainful Activity describes a certain level of work. It includes both how much activity the work involves and how much money it earns.

“Substantial” means the work involves a lot of physical or mental activities, or both. Part-time or full-time work can be considered substantial work activity.^{xi}

Gainful work activity is:

- Work that you get paid for;
- Work that is the kind of work people usually get paid for; or
- Work that you were supposed to get paid for, whether or not you were paid.^{xii}

To decide whether your work is substantial gainful activity, the SSA uses **earnings guidelines**. This means that the SSA will compare the money you make (or could have made) with a set amount that the SSA considers substantial gainful activity. This number depends on the type of disability. If the person with a disability is blind, then the amount is higher than it is for people with disabilities who are not blind. The number is changed each year. For the current number, see the **[SSA website here](#)**.^{xlii}

If you are self-employed, the SSA will use different methods to determine substantial gainful activity based on whether or not you are blind.^{xliii}

If you are not blind and you are self-employed, the SSA uses two different tests based on how long you have been receiving benefits.

- If you are applying for the first time or have received benefits for less than 24 months, SSA uses the **Three Tests method**. Your work activity is substantial gainful employment if:
 - You render significant services to employers and had average monthly earnings over the specified amount;
 - Your work is comparable to the work done by people without disabilities in the same kind of job; or
 - Your work is worth more than the specified amount for substantial gainful activity, even if that is not what you are paid.^{xliv}
- If you have been receiving SSDI benefits for at least 24 months, SSA uses the **Countable Income Test**:
 - The SSA will compare your countable earnings to the specified amount in the earnings guidelines. If you make more than that amount, then your work is substantial gainful employment. However, if you show that you are not rendering significant service to an employer, then it may not be considered substantial gainful employment.^{xlv}

If you are self-employed and you are blind, the SSA will look at whether you rendered significant services to your business **and** whether you received a substantial income. To do this, the SSA will look at countable earnings. If you are 55 or older, the SSA will also look at what level of skill is needed for you to do your work.^{xlvi}

Work Credits

In order to be eligible for SSDI, the applicant needs to have worked for 5 out of the previous 10 years. To figure this out, the SSA will give **work credits** based on the income the applicant earned while working. A work credit is equal to \$1,320[†] and an applicant can only receive 4 work credits per year. Generally, if the person is older than 31 and has earned 20 work credits in the last 10 years, then he or she may be eligible for SSDI. The age at which the person's disability developed may change this formula; consult the [SSA website for more information](#). This means that a person does not have to work for 5 consecutive years to qualify for SSDI.^{xlvii}

Five Step Sequential Evaluation Process

In order to decide if an applicant qualifies for SSDI benefits, the SSA will go through a five-step process.^{xlviii}

Step 1: Is the person working at or above the level for substantial gainful activity?

Remember in the section **above** that substantial gainful activity means the level at which a person works and earns money. The number is set at a specific amount each year. If the person makes above that amount, the SSA will not consider him or her. If someone makes less than that, then the SSA will go to the next step.^{xlix}

If the person is paying expenses related to their disability in order to allow them to work, these may qualify as **Impairment-Related Work Expenses**. These are deducted when:

- The item/service(s) are needed to allow the person to work;
- The item/service(s) are needed because of a physical or mental impairment;
- The applicant pays for the item/service(s) and is not reimbursed by another source; and
- The cost is “reasonable” —the applicant is paying the standard price for the item/service(s).¹

[†] This number changes annually. Be sure you are checking the SSA page for updates.

Step 2: Does the applicant have a severe mental or physical condition?

At this step, the SSA will look at whether the person has a **medically-determinable disability**. This means that a person's medical records show the presence of a disability. The SSA will also look at whether the disability interferes with the person's work and at whether the disability is going to last long enough to qualify as a disability. Remember the **definition under**

Your medical records must support that you have a disability, but your doctor does not decide if you will receive SSDI. Even if your doctor says you have a disability, you still may not be eligible.

SSA requires that the disability last (or be expected to last) at least twelve months or end in death.

If the disability is not severe enough to interfere with work, or if does not last long enough, the application can be denied at this step. If the disability is severe and meets the time requirements, then the SSA moves on to the next step.ⁱⁱ

Step 3: Does the applicant's medical condition meet or equal a condition listed by the SSA?

The SSA has a list of medical criteria so severe that a person with such conditions is automatically considered to have a disability. If the person has the same or equal condition, then the person is eligible for SSDI. If not, the SSA moves on to step 4. The SSA can only approve the application now. It cannot be denied at this step.ⁱⁱⁱ

Step 4: Can the applicant do the same Past Relevant Work?

Now, the SSA will compare the work that the applicant used to do (**Past Relevant Work^{liii}**) with their current ability to work full time (**Residual Functional Capacity**). When looking at Past Relevant Work, the SSA examines how applicants actually preformed their work. The SSA will also look at the way the work is done on the national level. If the applicant is able to do the work either the way he or she used to or how it is generally done, then he or she is able to perform Past Relevant Work.

If an applicant can do any Past Relevant Work, then he does not have a disability under the SSA. Even when Residual Functional Capacity shows that a person is unable to do the work in the same way or now has limitations or restrictions, then he or she will not be found to have a disability.^{liv} If the SSA finds that an applicant cannot do Past Relevant Work, then the it will move on to step 5.

Past Relevant Work must have been:

- Substantial Gainful Activity;
- Performed in the relevant time period; and
- Performed long enough for the person to become skilled.

Step 5: Can the applicant adjust to do other work?

Residual Functional Capacity:

This test looks at different tasks a person might do in his or her job and sees if the person is still able to do these tasks full-time. The tasks may be mental or physical.

At this step, the SSA will consider the person's **Residual Functional Capacity**, as well as their age, education, and work experience.^{lv} It also looks at whether the person has skills from his past relevant work that can be in a different type of work; these are called **transferable skills**. Having skills that can be used in other work weighs more heavily than age and education.^{lvi}

The SSA wants to see if applicants are able do other work. If they can, applicants are not considered to have a disability. If applicants cannot, the SSA finds them to have a disability and approves the application.^{lvii}

Remember

The SSA may need more documentation in order to make a decision at each step. For example, the SSA may send out forms for a doctor to assess the applicant's Residual Functional Capacity. In order to help the eligibility determination go more smoothly, the applicant should check his or her mail often and respond promptly.^{lviii}



General Overview of the SSDI Application and Appeals Process

Application Process

Gather Information

- Collect information about work history
- Collect medical records
- Collect personal information

Submit Application

- Fill out the SSDI application
- Sign and return paper copy
- Complete and return any additional paperwork that the SSA requests

SSDI Eligibility Interview

- Attend the meeting in person, or
- Schedule a meeting over the phone

Receive Letters on the Decision

- Receive determination letters from the SSA at each step
- Follow the given response deadline when needed
- Receive the Final Determination

Appeals Process

Reconsideration

If your application is denied, you can request reconsideration. The same application will be reviewed again.

ALJ Hearing

If the reconsideration is denied, you can appeal to an administrative law judge (ALJ) within the SSA. Witnesses may be called.

Appeals Council Review

If the ALJ denies your appeal, you may appeal the case again. It will go before the Appeals Council.

Federal Court Action

If your claim is denied again by the Appeals Council, you can bring a claim in front of a federal judge.

Becoming an Appointed Representative

Appointed Representative Definition

An **appointed representative** is a person that an SSA claimant chooses to deal with the SSA on his or her behalf. Becoming an appointed representative allows you to make and receive communications with the SSA directly instead of through the claimant. An appointed representative must be registered with the SSA and complete the forms in the section.^{lix}

There are some people who may be involved in the SSA application process or in managing a claimant's affairs who are not appointed representatives. The following people are **NOT** appointed representatives:

- A person who receives and manages the claimant's benefits
- An interpreter
- A **legal representative of a person's estate** as defined in [GN 02301.035](#), who receives an underpayment on behalf of a deceased claimant;
- a **designated representative**, as defined in [GN 03340.035B](#), who receives and reviews a claimant's medical records when it is determined that the claimant seeing his or her own medical records would have an adverse effect;
- a **legal guardian** of a legally incompetent person;
- a parent who signs an application for a child under age 18; or
- a friend or relative who comes with and helps the claimant with the application but will not be his or her ongoing advocate.^{lx}



Qualifications

You must meet several qualifications to serve as an appointed representative. These differ based on whether or not you are an attorney.^{lxi}

The chart below lists the qualifications for becoming an appointed representative.^{lxii}

Attorney	Non-Attorney
<ul style="list-style-type: none">• Admitted to practice in the state where the claim is filed• Not disqualified or suspended from working with the SSA• Not prohibited by law from being a representative	<ul style="list-style-type: none">• Generally known to have good character• Capable of giving valuable help to the claimant• Not disqualified from working with the SSA• Not prohibited by law from being a representative <p>A non-attorney who will receive direct payment must satisfy additional qualifications.</p>

Forms to File

The following forms may need to be submitted to the SSA when you become an appointed representative.^{lxiii}

- **Form SSA-1696-U4 – Appointment of Representative**
 - The client must sign and submit this form appointing you as the representative.
 - Each new client you have must complete this form.
- **Form SSA-1699 – Registration for Appointed Representative Services**
 - This form gives the SSA information about the representative.
 - This form only has to be submitted once by each representative, unless information about the representative changes.

For online access to the Appointed Representative Services, you must complete a special Form-1699 that the SSA will send to you.

- **Form SSA—1695-F3 – Identifying Information for Possible Direct Payment of Authorized Fees**
 - This form provides information needed in order for the appointed representative to receive direct payment for their services. **Direct payment** means the money will come directly from the SSA instead of through the client.
 - This form must be submitted for each case.
- **Form SSA-1694 – Request for Business Entity Taxpayer Information**
 - This form provides information about the law firm or other business entity you are a part of and allows the income from the representative fees to be taxed to the firm/employer instead of the individual.
 - This form is optional.

Receiving Payment

Appointed representatives may receive fees for their work on SSA cases. However, the fees must be approved by whichever review board you go before (federal court or SSA). You may petition for fees within 60 calendar days of the decisions by completing **Form SSA-1560**.^{lxiv}

Enrolling in Appointed Representative Services (ARS)

You can gain eFolder access to submit evidence and other documents online by enrolling in ARS. To enroll:^{lxv}

- Contact your local hearing office and request an invitation to enroll.
- You will be mailed an invitation notice and a specially marked Form-1699.
- Complete the specially marked Form-1699 and fax it to 1-877-268-3827.
- Contact the local hearing office to schedule an in-person enrollment.
- Attend the in-person enrollment and bring with you:
 - Your invitation notice
 - A valid government photo ID
 - A cell phone capable of text messaging

Rules of Conduct

You can find the specific rules of conduct for representatives working with the SSA in [20 C.F.R. § 404.1740](#) and [20 C.F.R. § 416.1540](#). Be sure to review these rules before acting on behalf of a client.^{lxvi}

Preparing for the Appeals Process^{lxvii}

- Check to make sure the deadline windows are still open. Usually, the applicant has 60 calendar days to appeal after the denial.
- File the appeal as soon as possible. If you cannot, mark each letter that needs to be appealed with the deadline for filing.
- Get a copy of the original application. Review it to ensure there is no missing information.
 - If the applicant registered for a *mySocialSecurity* account, check the account for any information that may have been sent there.
- Gather the denial letter and any other communications that the SSA sent to the client. These should contain the reasons why the application was denied and will help you figure out what other information you need to collect.
- Request updated medical reports from the applicant's treating physician(s). Ask them to explain why the applicant cannot work.
- Request a statement from someone who knows the applicant and can explain how the disability impacts the applicant's life.

You can use a tool like this [Deadline Calculator](#) to check deadlines.

The Appeals Process with Tips for Success

Reconsideration

The first step in the SSA Appeals Process is to request reconsideration. Reconsideration means that a person other than the person who made the original decision will look at the application.^{lxviii} An estimated one in ten cases that is appealed at this level are awarded benefits.^{lxix}

There are three types of reconsideration, but they are not all available in every case.^{lxx}

- Case Review—This is available for all types of appeals.
 - You will not meet with a reviewer in person.
 - You may add additional facts to the file.
- Informal Conference—This is available in SSI cases except for denials based on medical issues. It is also available for cases involving Special Veterans Benefits if the SSA is stopping or lowering benefits.
 - You may add facts and make an argument before a reviewer.
 - You may invite witnesses.
- Formal Conference—This is available only if the client's SSI or Special Veterans Benefits are being stopped or lowered.
 - You may add facts and make an argument before a reviewer.
 - You may invite witnesses.
 - The SSA may invite witnesses, and you may question them.^{lxxi}

If the SSA's denial is based on an SSDI application alone, then you can only select Case Review.



There are different ways to file a request for reconsideration based on the type of decision: medical or non-medical. Medical denials are given when the SSA says that the applicant’s disability is not medically-determinable. Non-medical decisions may include denials of a benefit such as retirement or spousal benefits, denials because the applicant did not work long enough, or decisions about overpayment.

This chart outlines the options for filing.^{lxxii}

	Medical Decision	Non-medical Decision
Paper	Form 561 Request for Reconsideration Form SSA-3441 Disability Report- Appeal Form SSA-827 Authorization to Disclose Information to the Social Security Administration	Form 561 Request for Reconsideration
Online	<u>Medical Appeal</u>	<u>Non-Medical Appeal</u>

If you complete the paper forms, send them to the local Social Security office.^{lxxiii} Request confirmation that the SSA received the paper copy, either by having the client deliver the paper materials in person and asking for a receipt or by sending a copy via certified mail.

Find your local SSA office using their [online locator](#).

ALJ Hearing

If the SSA denies the application for benefits again during the reconsideration, then you can appeal again by requesting a hearing before an administrative law judge (ALJ). The ALJ will review the case *de novo*.^{lxxiv} If the client chooses to appeal again, you must file the request for hearing within 60 calendar days from the date you received the reconsideration decision. Late filings are not often excused.^{lxxv}

Requesting the Hearing

You must request an ALJ Hearing in writing, but you can submit the request online or on paper by taking or sending the forms below to the SSA.^{lxxvi}

Online	Paper
Link to Online Request for ALJ Hearing	Form HA-501 Request for Hearing By Administrative Law Judge
	Form SSA-3441 Disability Report-Appeal
	Form SSA-827 Authorization to Disclose Information to SSA

Things to Expect During The Hearing:^{lxxvii}

- The applicant will be asked questions under oath.
- You may call witnesses and question them.
- You may submit new evidence.
- The ALJ may call witnesses, and you may question those witnesses.

Important: If you are going to submit new evidence, you must do so at least 5 business days before the scheduled hearing. Otherwise, the ALJ may not consider it.^{lxxviii} You can submit evidence using the fax number and special barcode that the SSA sends to you with the Acknowledgment of Hearing Notice. Or, you can submit it through ARS online. The SSA encourages the use of ARS and submitting evidence more than 15 business days before the hearing.^{lxxix}

For more best practices from the SSA on submitting evidence and serving as an appointed representative, [visit their website here](#).

The ALJ hearing is not an adversarial process. The ALJ is not there to oppose the claimant, but to make a neutral decision and develop the record.^{lxxx} The ALJ uses a preponderance of the evidence standard to make a decision; the ALJ will look at all the evidence and decide if the fact (in this case the eligibility for SSDI) is more likely than not.^{lxxxi}

Some more tips from the SSA on submitting evidence are:^{lxxxii}

- Submit medical evidence separately from non-medical evidence.
- Submit records by source.
- Send no more than 30 pages at a time.
- Submit evidence with a cover letter describing the evidence and its date range. Use the barcode sent to you by SSA to identify the case and claimant.

Attending the Scheduled Hearing

It is very important that the claimant attends the hearing. If your client cannot make it, inform the ALJ as soon as possible and state the reason why the claimant cannot attend the hearing. If the judge decides that there is not good cause for missing the scheduled hearing, the ALJ can dismiss the request for hearing.^{lxxxiii}

Claimant may also choose to waive their right to appear at the hearing by completing [Form HA-4608 Waiver Of Your Right to Personal Appearance Before An Administrative Law Judge](#). The ALJ will then review the evidence without the claimant present. However, if the ALJ decides that the claimant needs to appear in order to make a decision, he or she can still schedule a hearing despite the waiver.^{lxxxiv}

You can also attend the [hearing by video teleconference](#). This is conducted like a regular ALJ hearing, but the claimant, the representative, and witnesses are in a different location from the ALJ. You will use a video monitor to communicate with the judge. A video teleconference may allow your hearing to take place sooner because there are more locations where a video teleconference hearing can take place, so this may be more convenient for the client and representative. It may even take place at the representative's office if the representative has signed the appropriate paperwork.^{lxxxv}

For more information on how to sign up for video teleconference ALJ hearings, [visit the Representative Video Project Fact Sheet](#).

Appeals Council Review

If the ALJ denies the claim, then you can submit a request to have the ALJ's decision reviewed by the **Appeals Council**.^{lxxxvi} You must submit this request in writing within 60 calendar days of the ALJ's decision.^{lxxxvii}

Requesting Review

To request review by the Appeals Council, you will need to complete and submit **Form HA-520 Request for Review of Hearing Decision/Order** or write a letter requesting the review.^{lxxxviii} If you need an extension of time to submit evidence and are using Form HA-520, be sure to check the box next to "Please grant me an extension of time to submit evidence or argument" under Question 4.^{lxxxix} There are three ways that you can submit the request:^{xc}

By Mail	By Fax	In Person
Mail to: Appeals Council, OARO 5107 Leesburg Pike Falls Church, VA 22041-3255 This is the preferred method.	Directly to the Appeals Council at: 703-605-7101 Do not use the barcodes you used for faxes related to the ALJ hearing.	Submit paperwork to your local SSA office. They will send it to the Appeals Council.

Important

The Appeals Council Request for Review **should not** be submitted electronically. This will slow down the process.^{xcii}

Submitting Evidence to the Appeals Council

Any additional evidence or arguments that you want to submit to the Appeals Council should be sent with the Request for Review. If you need more time to submit evidence, you must request an extension of time in writing when you submit the request for review.^{xcii}

If you are granted an extension of time, you should receive a new barcode from the Appeals Council. You will need this barcode when submitting evidence during the extension of time.^{xciii} There are four ways to submit evidence to the Appeals Council during the extension of time:^{xciv}

Mail	Electronically	Fax with Barcode	Fax without Barcode
SSA will send an address with the barcode.	Using the Electronics Records Express tab in ARS.	SSA will send a fax number with the barcode.	If you do not have a barcode, use fax number 703-605-7201.
Use the barcode as the front page.	You will need the claimant's SSN and the Request ID, which is on the barcode. The Request ID starts with the first number that is not a 0.	Use the barcode as the first page.	

What The Appeals Council Does

The Appeals Council looks at all requests for review, but it does not review all cases. It may choose to grant or deny review. Only if the review is granted will the Appeals Council fully review the ALJ's decision.^{xcv} It will use a substantial evidence standard of review; this means that Appeals Council will look at all of the evidence and decide if the evidence in the record supports the ALJ's decision.^{xcvi} The Appeals Council can then uphold the ALJ's decision or send it back to the ALJ for a new decision.^{xcvii} This means the Appeals Council will not make a decision on the actual claim.^{xcviii}

If the Appeals Council chooses not to review the case or decides to uphold an unfavorable ALJ decision, then the next step is to file a civil action in a Federal District Court.^{xcix}

Federal Court Action

The last step in the SSA Appeals Process is filing civil action in a Federal District Court.^c After receiving notice of the Appeal Council's decision, you have 60 calendar days to file the civil suit.^{ci}

Choosing the Right Jurisdiction

You must file the suit in the district court where the claimant lives or has his or her principal place of business.^{cii} To find the right district court, you can use the federal court system's [court locator](#). For claimants who do not live or have a principal place of business within a judicial district, you should file the claim in the United States District Court for the District of Columbia.^{ciii}

Service of Process

Copies of the complaint and the court summons must be sent via certified or registered mail to the SSA's Office of the General Counsel.^{civ} To find the right office to send the copies to, look for the office associated with the district court in which you are filing [here under Section B\(1\)](#).

Fees

You have to pay a fee in order to file in federal court. This is the first step of the SSA Appeals Process that requires a fee.^{cv} If you have not done so already, be sure to discuss with your client how you will handle any fees. For more information on specific SSA rules for appointed representatives collecting fees, review the ["Becoming an Appointed Representative"](#) section of this manual.

Index of Forms

Becoming an Appointed Representative

[Form SSA-1696-U4](#) – Appointment of Representative

[Form SSA-1699](#) – Registration for Appointed Representative Services

[Form SSA-1695-F3](#) – Identifying Information for Possible Direct Payment of Authorized Fees

[Form SSA-1694](#) – Request for Business Entity Taxpayer Information

Filing the Appeal

[Form SSA-561-U2](#) – Request for Reconsideration

[Form SSA-3441-BK](#) – Disability Report – Appeal

[Form SSA-827](#) – Authorization to Disclose Information to the SSA

[Form HA-501-U5](#) – Request for Hearing by Administrative Law Judge

[Form HA-520-U5](#) – Request for Review of Hearing Decision/Order

[Form SSA-4734-BK](#) – Physical Residual Functional Capacity Assessment

[Form SSA-4734-F4-SUP](#) – Mental Residual Functional Capacity Assessment

[Form SSA-3380-BK](#) – Function Report-Adult-Third Party

Requesting Fees

[Form SSA-1560](#) – Petition for Authorization to Charge and Collect a Fee For Services Before the Social Security Administration

If you need these forms or other SSA documents in another language, visit the [SSA's Language Center](#).

Glossary

Ableism – Ableism is the term for the systemic bias and discrimination against people with disabilities. It reflects the negative image of people with disabilities that society has created. It also includes the false assumption that people with disabilities are less capable and depend on the charity of others. Well-intentioned actions, such as rushing to help a person in a wheelchair without asking, are often examples of this false belief.^{cv}

Accessible – Generally, something that is able to be used or understood. In this manual, we mean something can be used or understood by a person with a disability.^{cvii}

ALJ (Administrative Law Judge) – A decision maker within an agency, in this case the SSA, who presides over hearings between the agency and another party.^{cviii}

ALJ (Administrative Law Judge) Hearing – The second step in the SSA Appeals Process. The claimant will appear before an ALJ and argue why he or she should receive benefits.^{cix}

Americans with Disabilities Act (ADA) – A law that requires the government and public places to make accommodations so that people with disabilities can use those spaces or services.^{cx}

Appeals Council – The Appeals Council consists of 57 Administrative Appeals Judges, 46 Appeals Offices, and support staff. The Appeals Council reviews requests to review ALJ decisions. It may dismiss, grant, or deny the request for review. Upon granting review, it will either decide the case or remand it.^{cx}

Appeals Council Review – The third step in the SSA Appeals Process. The applicant's case will go before the Appeals Council if the applicant disagrees with the decision of the ALJ.^{cxii}

Appointed Representative – Someone who claimants choose to deal with the SSA on their behalf.^{cxiii}

Children's Benefits – The types of SSA benefits that children can receive through a parent who receives SSDI, retirement benefits, or who has died after working enough to receive SSA benefits. To qualify the child must be:

- Younger than 18 years old
- 18-19 years old and still in high school, or
- 18 or older with a disability that began before age 22.^{cxiv}

Concurrent Eligibility – When a person qualifies for more than one type of SSA benefit at the same time, such as SSI and SSDI.^{cxv}

Countable Income – The amount of money remaining after SSA subtracts any deductions from your total income. The SSA uses this amount to determine SSI eligibility.^{cxvi}

Countable Income Test – A test the SSA uses to determine SSDI eligibility when the applicant has been self-employed and has been receiving SSDI benefits for more than 24 months.^{cxvii}

Definition of Disability for Children under 18 years – The SSA considers a child under 18 years of age to have a disability if:

- The child has a “physical or mental condition(s) that very seriously limits his or her activities; and
- The condition(s) must have lasted, or be expected to last, at least 1 year or result in death.”^{cxviii}

Designated Representative – A representative appointed to receive and review the claimant's medical records if seeing his or her own records will cause an adverse effect, such as ruin the doctor-patient relationship, negatively impact the patient's health, or interfere with treatment.^{cxix}

Determination Letters – Letters the SSA sends to applicants to let them know its decision.^{cxx}

Direct Payment – This is a fee for representation approved by the SSA to the appointed representative. The SSA pays this through the claimant's past-due benefits.^{cxxi}

Disability (ADA Definition) – The ADA defines a person with a disability as someone who has “a physical or mental impairment that substantially limits one or more major life activities..., a record of such impairment, or being regarded as having such an impairment.”^{cxxii}

Disability (SSA Definition) – The SSA defines a person with a disability as being unable to participate in any substantial gainful activity. This must be because of a medically-determinable physical or mental impairment that:

- Is expected to result in death; or
- Has lasted or is expected to last for a continuous period of at least 12 months.^{cxxiii}

Disabled Adult Child (DAC) – In this case, child means the daughter or son of someone who has worked enough to qualify for SSDI. The DAC may receive SSDI benefits through a parent’s Social Security benefits if he or she has never worked or is working very little. To be eligible to receive benefits as a DAC, the person must be unmarried, 18 or older, and have a disability that started before age 22. These benefits come from the parent’s earnings record.^{cxxiv}

Duration Requirements – Part of the SSA’s definition that requires a disability to last, or be expected to last, more than a year or to end in death.^{cxxv}

Earnings Guidelines – The SSA compares the amount of money the applicant makes to set amounts that determine Substantial Gainful Activity.^{cxxvi}

Electronic Records Express – An evidence submission portal that you can access through the Appointed Representative Services page.^{cxxvii}

Essential Functions – The basic duties that an employee must be able to do in order to perform a job.^{cxxviii}

Federal Court Action – The fourth step in the SSA Appeals Process. A federal court reviews the Appeals Council’s decision.^{cxxix}

Impairment-Related Work Expenses – Costs a person with a disability has to pay in order to work, such as accessibility devices or transportation, because of the condition. The SSA may deduct these costs from the applicant’s total income when determining if the applicant works above or below the level for Substantial Gainful Activity.^{cxxx}

Individuals with Disabilities Education Act (IDEA) – A law that protects the rights of students with disabilities to a free, appropriate public education.^{cxxx}

Legal Guardian – This is a person who is authorized by law to act on behalf of a minor or a person declare legally incompetent by the court.^{cxxxii}

Legal Representative of a Person's Estate – The representative of a deceased person's estate who can receive underpayments on behalf of the estate. This generally refers to the executor of the will or the court-appointed administrator of the estate.^{cxxxiii}

Medically-Determinable – When medical records or tests can show that a person has a disability.^{cxxxiv}

Otherwise Qualified – When a person can get services, take part in public programs or activities, or do their job with or without fundamentally changing the rules or practices.^{cxxxv}

Past Relevant Work – The type of work an applicant used to do. It must have been Substantial Gainful Activity, performed in a relevant period of time, and performed long enough for the person to have become skilled.^{cxxxvi}

People First Language – Appropriate and respectful language that is used to talk to or about a person with a disability. The goal of Person First Language is to focus on the person over the disability.^{cxxxvii}

Public Accommodation – A place of business that is generally open to the public. Even privately owned entities are public accommodations.^{cxxxviii}

Reasonable Accommodation – A slight change or modification to a job, service, or facility that allows people with disabilities access or enables them to enjoy the facility or service.^{cxxxix}

Reconsideration – The first step in the SSA Appeals Process. A person who did not make the original decision reviews the application again.^{cxl}

Representative Identification Number – A 10-character number assigned by the SSA to appointed representatives to use instead of their SSN when making changes to their representative registration information.^{cxli}

Representative Payee – A person appointed by the SSA to receive SSA benefits on behalf of a person who cannot manage his or her benefits independently.^{cxlii}

Residual Functional Capacity – A test that looks at tasks a person might do in his or her job, and then determines if the person is able to do these tasks for 8 hours a day. There is a test for mental and physical tasks.^{cxliii}

Service Animal – A dog or miniature horse that is trained to help a person with a disability through duties such as pulling a wheelchair, picking things up, or reminding the person to take medications.^{cxliv}

Social Security Disability Insurance (SSDI) – A program that pays benefits to workers with disabilities. In order to receive these benefits, the applicant must be “insured” by having worked long enough and paid Social Security taxes. SSDI benefits can only start 5 months after the onset of the disability.^{cxlv}

Social Security Retirement Benefits – People who are at least 62 years of age, and who have worked and paid taxes into Social Security, receive benefits based on amount of time they worked.^{cxlvi}

Substantial Gainful Activity – Work that requires a person to do a lot of physical or mental activity and that earns money (or is the type of work that usually earns money).^{cxlvii}

Supplemental Security Income – SSI pays benefits to older people, people who are blind, and people with disabilities based on financial need. This is a welfare program.^{cxlviii}

Supplemental State Benefits – Payments that a state may give to people with disabilities on top of federal benefits.^{cxlix}

Survivor Benefits – Benefits given to the spouse of a worker who has died. These are drawn from the earnings record of their deceased spouse. A widow or widower may receive survivor’s benefits if:

- He or she is over 60 years old,
- He or she is over 50 years old and has a disability, or
- He or she is raising the young child of the deceased worker with a disability.^{cl}

Technical Denials – When an application is denied because a person has not worked enough to qualify for SSDI or has a disability but earns over the Substantial Gainful Activity amounts.^{cli}

Three Tests Method – The test the SSA uses to determine substantial gainful activity for a person who has been receiving SSA benefits for less than 24 months, is self-employed, and is not blind.^{clii}

Transferable Skills – Skills that a person used in one job or education/training that can be used in a different job. The SSA will look at a person's transferable skills when deciding whether that person can still work.^{cliii}

User Identification Number – The number the SSA assigns to an appointed representative that is used to access the online Appointed Representative Services.^{cliv}

Veteran's Benefits – SSA will add qualifying military service to lifetime income, which often raises the retirement benefits for veterans.^{clv}

Video Teleconference Hearing – An ALJ hearing that is conducted over a video monitor where all parties are present remotely.^{clvi}

Work Credits – The SSA awards these when a person has earned a set amount of money. An applicant can only receive 4 work credits per year. If the person has earned 20 work credits in the last 10 years, then he or she may be eligible for SSDI. This means that a person need not have worked 5 consecutive years in order to qualify for SSDI.^{clvii}

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The Enable Project

People with disabilities make up a significant percentage of the State of Florida, Miami-Dade County, and the City of Miami. The Enable Project recognizes the need for greater access to services for people with disabilities in order to promote inclusion in existing social justice organizations. The Enable Project is a three-pronged approach to promoting a better community for people with disabilities:

- Training social justice organizations to work with people with disabilities at the intersection of disability and civic engagement;
- Training advocates to help people with disabilities apply for Social Security Disability Insurance Benefits; and
- Training attorneys to handle Social Security disability appeals.

