

Getting Social Security Disability Benefits on the First Try

By Jacques Chambers

“Social Security turns everyone down the first time.” This statement seems to be heard everywhere about applying for disability benefits under Social Security. It is definitely **NOT TRUE**, and does not have to happen with your claim.

Yes, It is true that most initial applications are rejected at the initial stage; in 2005, for example, 64% of disability applicants were rejected at the initial application. But this is not so much a sign of Social Security benefits being difficult to get as it is due to the lack of preparation most people make prior to applying for benefits.

Many applicants simply walk into a field office with little or no preparation and expect to sign some papers and get benefits; and these applicants are overwhelmingly rejected. This is because the process of applying for benefits is such an ordered and formal process with so many steps that it almost might be considered a ritual rather than a process. The better an applicant understands the process and knows what Social Security is looking for when approving a claim, the greater the chance that the claim will be approved at the initial application.

For the claimant who wants to be approved the first time he or she applies, there are generally two ways to go. You may want to consider hiring an advocate who is familiar with the process and thoroughly understands the process from having gone through it many times with others. Or you may want to learn the process from the wealth of material that is available and file and track the claim on your own, but with a good understanding of what is expected.

Hiring an Advocate

Although it is not necessary to winning your case, you may want to consider hiring an advocate to assist you through the process. This may be an attorney, but there are also many excellent non-attorney advocates who may understand the initial application stage better than an attorney.

Social Security regulates the fees an advocate can charge you. Whether it is an attorney or not, the fee structure is the same. Understanding how the fees work may help you understand the advocacy system better.

Social Security limits any fees charged by an advocate to 25% of the retroactive payment you might receive, up to a maximum of \$5,300. Social Security will withhold the attorney's fee from their payment to you and pay the attorney directly. Non-attorney advocates generally are paid directly by the claimant once the retroactive payment is received from Social Security.

What does this mean? First it means that the fee is a contingency fee; you do not owe the advocate any fee unless your claim is approved. Second, it means that any fee paid to the attorney will come out of the lump sum check you receive for any back payments from Social Security. The advocate gets $\frac{1}{4}$ while you get to keep $\frac{3}{4}$ of any retroactive payment, so paying the advocate is not quite as painful as having to pay it up front.



Because Social Security Disability (SSDI) benefits are not payable until you have been disabled for five calendar months, it is often difficult to find an advocate who will assist you if you want to apply for disability benefits early in your disability. If you apply for disability benefits soon after stopping work and are approved, there may be no or very little retroactive benefits paid, so the advocate's fee may be very small or zero.

Because of this, many attorneys limit their practice only to Administrative Law Judge appeals which typically take place nine to eighteen months after the initial denial. There are advocates who will assist with the initial application, but they generally look for clients who have already been disabled anywhere from six to twelve months or longer. This will still allow them a reasonable fee once the claim is approved.

You should also be aware that Social Security does permit advocates to bill you for expenses they incurred over and above the permitted fee. Before hiring an advocate, you should ask what expenses they typically charge to their clients. Do they really expect you to pay for all photocopies and postage, or just the major expenses? Make sure the fee agreement you sign reflects what they promise.

Also, ask any prospective advocate just what assistance they will provide. Will they assist in completing all the forms including questionnaires that may be sent after the initial application is filed? Will they go with you to the initial interview? How frequently and closely do they track your application once it is filed? How will they assist in getting all medical records submitted?

Before hiring an advocate you should get an idea of their experience with the disability process. Is this their only occupation or a sideline? How long and how many times have they gone through the process with someone? While the rate of approvals by a particular advocate may be helpful, it could be distorted by the types of claims they normally handle? A more important question may be how familiar are they with the application process and how it applies to your specific disability.

Once you have selected an advocate, there are two documents you will be asked to sign. Social Security has an Appointment of Representative form (SSA-1696-U4). The other is the fee agreement between you and the advocate. Read the fee agreement carefully to get a complete understanding of what you will be obligated to pay if the claim is approved and if the claim is not approved. Both of these forms must be turned in with the initial paperwork at the time you file for benefits.

If you have private disability insurance, most disability carriers will provide an attorney or other advocate at their expense. If you prefer to choose your own advocate, most disability insurance companies will still cover the cost, but you should confirm that with the insurance carrier prior to hiring your own advocate.

Filing for Benefits on Your Own

You don't necessarily need an advocate to get benefits the first try. If you are relatively comfortable with completing forms and following instructions, you may not really need to hire an advocate. If you choose to file on your own, however, it is imperative that you prepare for the process.

There is ample assistance you can tap into in order to learn how the process works and what Social Security is looking for. There are many websites that offer information on the disability application process, including the archives of this site:

http://www.hcvadvocate.org/hepatitis/living_w_hepatitis_C.asp. Others include: <http://www.ssa.gov> and <http://www.helpwithbenefits.com>

There are also many books on the subject. One of the best books published on the process is *Nolo's Guide to Social Security Disability* from Nolo Press (www.nolo.com). It is also reasonably priced compared to some on the market.

There are also chat rooms and newsgroups that focus on disability and applying for Social Security benefits that provide you the opportunity to read others' experiences and ask for advice. A word of caution on these sites, however: Most of the advice comes from people who have gone through the process only once, their own claim, so don't assume that what worked or didn't work for them will do the same for you. Also, you may get the impression from these sites that the process is filled with traps and pitfalls and other scary possibilities. You should keep in mind that these sites are frequented primarily by people who had problems during the process, or are advocates trolling for business. Applicants whose claims sailed right through have no need to visit such places.

One of the drawbacks to filing on your own is that it is not easy to obtain all the necessary forms to complete in advance of filing. Some forms are available at: <http://www.ssa.gov/online/forms.html>. This site does not, however, provide the primary initial forms for SSDI, *Disability Report – Adult* (SSA-3368-BK). That form can be obtained at www.ssa.gov/online/ssa-3368.pdf. Some of the books also show samples of the forms.

Finally, in addition to learning the process and understanding the forms, there are some common misunderstandings that can derail your application:

Your doctor does not declare you disabled. Social Security has its own criteria for determining if you are disabled by their standards, and your doctor's opinion of your ability to work is not part of them. If you want your doctor to write a narrative letter supporting your disability it is more important that he or she give the basis for the conclusion of disability, any lab tests, observed symptoms, experience with dealing with your conditions, etc.

Social Security doesn't care whether or not you get benefits. Despite concern over the growing federal deficit, there is no concerted effort to keep people from receiving benefits or incentive to turn people down as might happen with private insurers. The individual persons who determine your eligibility are quite happy to approve a claim if it meets their criteria.

It's a matter of following the rules, not really trying to see if an individual can work or not. The Social Security Administration is a huge bureaucracy. In an effort to make the process uniform throughout the country there are volumes and volumes of



rules that must be followed. This, complicated by the fact that the staff is tremendously overworked, has caused Social Security to stop relying on one analyst's ability to carefully analyze a particular claimant and independently conclude they are disabled enough to collect benefits. Sadly, it has become a matter of examining medical records to see if the right "boxes" can be checked off on their list. If so, the claim is approved; if not, the claim is denied. It is all the more important that you know the process before applying for benefits.

Also, because of this, it is imperative that a claim be tracked by someone – either the claimant or the advocate – to make sure that all requested medical records are submitted and that the medical records accurately reflect your condition and contain the necessary documentation to support the claim of disability.