



COMMUNITY
LEGAL SERVICES
of MID-FLORIDA

What you need to know about...



Social Security Disability and SSI



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

Understanding the process

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

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

Supplemental Security Income (SSI) benefits are disability benefits for those that have not paid into the system to earn DIB or have paid too little to be insured over the SSI amount. It is possible to receive both DIB and SSI but the two checks will never amount to more than the SSI amount. The SSI benefit amount is a set rate and is increased slightly each year due to the cost of living increase. SSI is a need-based program. This means that to qualify your income and assets must be limited. Generally, you are not eligible for SSI if you own assets that total \$2,000 or more. *For more information on this, you can visit www.ssa.gov or get a brochure from your local Social Security Office.*

What If I am Denied?

There are many appeal levels when fighting for your disability benefits. If you are denied on your initial application, you must appeal within sixty (60) days to preserve your onset date. Your onset date is the date you became disabled. For SSI your onset date is no earlier than the

date you apply initially. For DIB, your onset date is the date you became disabled but no earlier than one year prior to your application date.

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

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

Request for Review of Hearing Decision/Order by the Appeals Council: This is an appeal of an unfavorable decision by a judge. You must file the Request for Review of Hearing Decision/ Order form within sixty (60) days of the date of the decision by an ALJ. If you have any new and material evidence you should submit those with the Request for Review. The Request for Review is filed at your local Social Security office. You can anticipate waiting up to two years for a decision from the Appeals Council.

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

No. You may only do one or the other. Be mindful that on the new application, the Social Security Administration will not grant you benefits prior to the date of the Unfavorable Decision, only after that date. The Appeals Council may affirm the unfavorable decision, remand your case back to the ALJ for a new hearing or reverse the ALJ's decision.

Filing Suit in Federal District Court: You have sixty (60) days from an unfavorable Appeals Council decision to file suit in Federal District Court. This is essentially a paper appeal, as you will not have a hearing in federal court. You will need an attorney to properly proceed at this level.

How does Social Security determine whether I am disabled?

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

They will also consider your age, education and work background. The SSA also considers whether you have acquired any skills. the SSA will consider your work background for the fifteen years prior to your application for disability to determine if you can return to past work. If the SSA determines you cannot return to past work, it will then determine if you can work in any job at a substantial level despite your limitations.

How do I find an attorney to represent me?

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

How do I prepare my case?

Medical Records: Your medical records are usually the best evidence of your impairments and why you cannot work. It is very important that you tell your doctor about all of your impairments every time you

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

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

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

How should I submit records in my case?

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

test scheduled after the hearing date, you should advise the ALJ prior to the hearing and request that the record remain open to obtain this additional evidence.

Should I retain an attorney to represent me? Yes. Private attorneys take initial entitlement cases because the Social Security Administration will withhold attorneys' fees out of back benefits awarded. An attorney only gets paid if he/she is successful in getting the client on disability. The attorney is not allowed to take any fee out of ongoing disability benefits once they are awarded.

I Was On SSD/SSI; Now Social Security Says I Am No Longer Disabled

How will I know that the Social Security Administration is reviewing my case for medical improvement?

The Social Security Administration (SSA) reviews disability cases for medical improvement about every four to five years (this process is called a Continuing Disability Review). You will know when your case is being reviewed because you will receive a notice in the mail that Social Security is reviewing your case and asking for you to complete forms and return them by a certain date.

What if the SSA finds I got better after their initial review?

You have sixty (60) days to appeal by filing a Request for Reconsideration—Cessation of Disability. BUT you have only ten (10) days to appeal it and request that your benefits continue while you appeal. You can get the necessary forms to appeal the cessation notice at your local Social Security office. You must specifically request that your benefits continue and ask for the form to check and sign requesting same.

You may request that not only your benefits continue but your dependents' benefits as well. Failure to timely make this request may result in the loss of benefits while you fight the cessation decision.

What do I do when I receive the notice from the SSA?

It would be to your benefit to seek legal assistance as soon as possible, even upon receipt of this notice. Many cases result in findings of medical improvement and benefits stop because the client fails to properly and timely respond to this notice and/or subsequent ones, or the client completes the questionnaires incorrectly.

In completing the forms, it is important to be truthful and accurate in your reporting. For example, if you are asked how much walking you can do, do not guess but actually measure in time how many minutes/hours you can walk before you need to stop and rest.

It is also important that you disclose all of your current and past medical providers. The SSA will then obtain their records to verify that your impairments continue to render you disabled. Because the SSA reviews cases periodically, it is important that you continue to complain to your doctor about all of your impairments and how they make you feel each and every time you see the doctor. You know that you did not get better and so does your doctor; however, if the SSA reviews the records and they stop referencing your impairments, the SSA will assume you got better.

Should I request a hearing on reconsideration?

Yes, you should also contact an attorney as soon as possible to assist you in this appeal. *If you contact Community Legal Services of Mid-Florida, we will evaluate your case for merit and undertake representation if we believe we can help.*

Will any new medical problems be considered by the SSA in the cessation case?

Yes, any and all impairments suffered by you must be evaluated and considered in determining whether you have had medical improvement, which would allow you to return to work at a substantially gainful level. You should submit all medical evidence documenting all of your impairments to the SSA. If you are unable to obtain the medical records, the SSA will obtain them for you as long as you have completed the medical authorizations allowing them to do so and have provided them with the medical provider's information.

What if my doctor is supportive of my continuing disability case?

If your doctor indicates that he believes you remain totally disabled, it certainly would not hurt if his treatment notes actually stated just that. What is particularly helpful is when a doctor sets out your specific limitations, such as how much standing, walking, sitting, lifting, reaching, handling and the like you are able to do at a time or on a sustained basis over an average work day. Your doctor can be a great asset in your case.

What if my doctor is not supportive of my case?

You should consider changing doctors if you believe your doctor is not understanding the extent of your impairments. A doctor who is unsupportive of you can hurt your case. You should try to communicate with your doctor just how your impairments are affecting you on a daily basis. If your doctor does not listen or does not believe you, you should consider changing doctors.

Need More Information?

Please visit the Social Security Administration's website at ssa.gov or visit your local Social Security Administration office to pick up brochures and other materials.

What if I have no doctor at the time the SSA is reviewing my case?

It is very important that you find a doctor as soon as possible. If you recently moved and have not secured a new doctor, you must do so as soon as possible. Many cases are reviewed by the SSA because of the lack of medical treatment. The SSA will assume that you are not going to the doctor because you got better. If you do not have a doctor because you have lost health insurance as a result of the SSA's decision, seek out resources in your community such as the county health department. CLSMF keeps information on these resources for all 12 counties we serve.

What to do if you are notified of an overpayment by Social Security

Should I appeal the Notice of Overpayment?

If you are notified by the Social Security Administration (SSA) that they have overpaid you benefits, you have rights. If you believe the SSA is wrong and they have not overpaid you, or the amount they are claiming they overpaid you is wrong, you must file a Request for Reconsideration within 60 days of the Notice of Overpayment to protect your appeal. The Request for Reconsideration form is available at your local SSA office or on-line at www.ssa.gov.

If your Notice of Overpayment did not show how the overpayment was calculated, you should request an itemized statement. This will allow you to verify how the SSA calculated your overpayment. You may wish to consult with an attorney to determine whether the overpayment is correct and assess your legal options. If you do not file an appeal in time, you lose your right to object to the alleged overpayment.

Should I file a Request for Waiver of Overpayment Recovery?

The SSA has a process where it can decide to not collect on an overpayment. To qualify for this waiver, you must show 1) that you were not at fault in causing the overpayment and 2) that if you were required to repay the overpayment it would cause you financial hardship which would defeat the purposes of the program.

If you believe the overpayment is calculated correctly but you were not at fault in causing the overpayment and cannot afford to pay it back without enduring financial hardship, you should file a Request for Waiver of Overpayment Recovery. This form is also available at your local SSA office or online at www.ssa.gov.

What does the SSA mean by "at fault in creating the overpayment?"

You would be considered at fault and not eligible for a waiver if you failed to timely report earnings or assets to the SSA.

Examples of not being at fault:

- ✓ You report the income to the SSA within a short time (30 days) but the SSA did not put the information properly into your case.
- ✓ You were not aware of the income or asset (e.g., a long lost relative left you property in a will).
- ✓ You had a Representative Payee appointed for you and your Representative Payee failed to report income or assets. Be advised that while you would be considered not at fault, the SSA may go after the Representative Payee for reimbursement.

What does the SSA mean by "financial hardship?"

The SSA will consider it a financial hardship if after your necessary monthly expenses you will not have sufficient money left over to make a payment toward the overpayment each month.

The necessary monthly expenses considered by the SSA include rent/ mortgage, utilities, food, car payments, gas, insurance, taxes, credit card bills—minimum monthly payments only—as well as some other expenses.

When must a waiver be filed?

You may file a Request for Waiver of Overpayment Recovery at any time. There is no 60-day limit for this request. You are also not limited in how many waivers you file. This means that if the SSA denies a previous waiver and your financial situation worsens, you may file a new request based upon your current situation.

What if I am at fault or can pay back some of the overpayment but not all?

You can also agree to enter into a repayment plan with the SSA where you pay back a small amount each month out of your monthly benefits until the overpayment is paid in full. If you are an SSI recipient, this amount can be as low as \$10 per month.

Should I get legal representation to help me with an overpayment?

You should at least get legal advice. Community Legal Services of Mid-Florida can review your documents and advise you on the best course of action and even assist you in preparing your documents if you need help. If your case has merit, we will undertake representation.

This brochure is a publication of the Public Benefits Unit of Community Legal Services of Mid-Florida, Inc. This information is for general education only and is not intended to be used to solve individual problems, nor does it replace the advice of an attorney. The law which supports conclusions contained herein is subject to change.

**Contact CLSMF if you need any assistance
or have questions
on how to prepare your answer.
See back page for CLSMF contact information.**



COMMUNITY
LEGAL SERVICES
of MID-FLORIDA

BREVARD*: 866-469-7444

CITRUS & SUMTER

106 N. Osceola Avenue, Inverness, FL 34450
CITRUS: (352) 726-6592 | **SUMTER**: 800-984-2918

FLAGLER: 800-405-1417

HERNANDO: 866-801-5566

LAKE: (352) 343-6351
226 West Main Street, Tavares, FL 32778

MARION: (352) 629-6257
2300 SE 17th Street, Suite 201
Ocala, FL 34471

ORANGE*: (407) 841-7777
122 E. Colonial Drive, Suite 200
Orlando, FL 32801

OSCEOLA: (407) 933-1791
800 North Main Street, Kissimmee, FL 34744

PUTNAM: (386) 385-0928
216 S. 6th Street, Palatka, FL 32177

SEMINOLE*: (407) 322-6673

VOLUSIA: (386) 258-5600

128 Orange Avenue, Suite 100
Daytona Beach, FL 32114

ADMINISTRATIVE OFFICE: (386) 523-9181

Client toll-free: 800-363-2357

Florida Relay TTY calls Dial 711

Via email: info@clsmf.org

Apply for help online: applyforhelp.clsmf.org

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www.clsmf.org