



TIPS When Appealing a Decision on Your Claim for Social Security Disability (SSDI) or Supplemental Security Income (SSI)

Obtaining a disability benefit (SSDI or SSI) from the **Social Security Administration (SSA)** can be a long process. Most people are denied when they apply the first time and must appeal, often several times. You appeal when you disagree with the decision. The following information will help you know what to expect with your case and how to move through the stages. Note – If you received a denial notice over 65 days ago and did not appeal you must re-apply.

Think of it as a 3-stage process:

Stage 1 - **Application** – SSA approves about 20% of cases. This stage may take between 3-6 months and will depend on your disability and the quality of your evidence. If SSA denies your case you should consider appealing right way.

Stage 2 - **Request for Reconsideration** is the first appeal. SSA approves about 20% of these appeals. This stage may take 3-6 months and depends on new evidence in your case. If SSA denies your case you should consider appealing right way.

Stage 3 – **Request for Hearing by An Administrative Law Judge** is the second appeal. SSA approves about 50-60% of these appeals. It may take a year or more to obtain a date for your hearing which is often needed to further build your case.

When is appealing necessary?

Appeal when your denial letter states:

- Notice of Disapproved Claim – this would occur if our application is denied
- Notice of Reconsideration – this would occur if your Request for Reconsideration is denied

It is to your advantage to appeal.

All appeals MUST be filed within 60 days of the date on the denial notice.

There is a 5-day grace period. Beyond that, you must have “good cause” for a late filing which requires good documentation of your reason otherwise you will have to

re-apply. Avoid using the entire 60 days to file your appeal as a delay on your end adds to the wait times.

How to Appeal?

To appeal you may return to your online application using the PIN number provided when you applied. Or, go to: <https://www.ssa.gov/apply/appeal-decision-we-made>

If you filed your application with a telephone interview or paper application call SSA's tollfree number 1-800-772-1213 and you will be sent the proper forms to appeal. Have your denial notice available so they know which forms to send. Appeal forms can be faxed, mailed or dropped off at your local SSA office. Always obtain delivery confirmation such as a fax transmission sheet, certified return receipt when mailing or a time stamped receipt when dropping off.

If you are filing a **Request for Reconsideration** you need the following forms: SSA 561-U2, SSA-3441 BK, SSA-827.

If you are filing a **Request for Hearing by an Administrative Law Judge** you need the following forms: SSA HA-501-U5, SSA-3441 BK, SSA-827.

These forms can also be found here:

<https://www.ssa.gov/forms/>

SSA's office addresses and telephone/fax numbers can be found here:

<https://secure.ssa.gov/ICON/main.jsp>

When Do I Need A Representative?

If you require a second appeal (Request for Hearing) it is very important for you to get an advocate to help you. This is called "representation". Attorneys and non-attorneys provide representation but usually not before this stage. You can file the appeal by yourself but find a representative right away as it will take many months to prepare your case.

Note: disability Law Center of Virginia does not provide representation on social security disability benefit cases.

What can I do to improve my case?

- Review each denial notice carefully. See if any of the doctors or other treatment records you told them to collect are missing. Be sure to state this on the SSA-3441 for appeal and provide the contact information again. If you have new medical evidence be sure to include the providers contact information and dates of service.
- Keep going to the doctors that treat your disabilities. It is best to see a doctor who specializes in the treatment of your diagnosis rather than a primary care

- doctor. You should schedule follow up appointments so they can document your ongoing symptoms and limitations. Attend all appointments and follow your doctor's advice including taking medications or going to therapy as prescribed. If you miss an appointment, reschedule it.
- If you lack medical insurance apply immediately or review our guide entitled: **Do You Have a Disability and Need Healthcare?**
- Complete all forms by the deadlines.
- Make sure all information submitted repeats the same information. For example, don't say in one form "I walk one-half mile every day" and the next form: "I can only walk one block occasionally". If this happens to be true because your condition is worsening than say so.
- Prepare a list of the ways your condition affects you such as pain, fatigue, dizziness, shortness of breath, anxiety, depression, poor concentration or memory loss. Update it often. Bring the list to your doctors each time you visit and discuss ways your condition has gotten worse. Leave a copy of the list with your doctor for your file.
- Find an **advocate or representative** immediately after the second denial.

What does the representative do?

- A representative is an advocate. They will take time to review your file and get to know you and your disabilities. Some will ask to review any paper evidence that you have.
- They will ask you how your disabilities prevent you from working.
- They will collect your records and other important information throughout the entire waiting period as long as you keep them informed of who is treating you.
- They will electronically submit all new evidence to the hearing office including opinions they collect from your doctors prior to 5 days before your scheduled hearing.
- Sometimes they collect statements or special forms about your condition from your doctors.
- They will prepare an argument on your behalf based on why you meet the SSA definition of disability. Often, they prepare a letter to the judge to present this argument.
- They will prepare you and any witnesses for the hearing.
- They will keep you informed every step of the way before, during, and after the hearing.

What Should I look for when hiring a representative?

- Find an individual or firm that specializes in social security disability law.
- Find an individual or firm that is local so they are familiar with the judges in your community and so you have easier access to them when you need them.
- Find someone who agrees to stay in touch with you throughout the process and agrees to take your calls when you have a question or new information.

- Ask around for a recommendation.

What does it cost to hire a representative?

- You should pay nothing upfront unless the representative requires you to cover the cost of collecting your records.
- **You only pay your representative if SSA approves your case.** At that time, your representative may collect 25% of your past-due benefits not to exceed \$7000. You will sign a “Fee Agreement” agreeing to this.
- SSA usually pays this fee directly out of your past-due benefit. If not, the representative will collect the fee from you. Be sure to ask how this will take place.

What forms will I and the representative sign to make this official?

- SSA-1696 Appointment of Representative
- Fee Agreement

What if the administrative law judge denies me?

There are two more stages to the process. The first is called “Request for Review”. This appeal is submitted to the Appeals Council. Ask your representative to appeal. This appeal can take over a year, sometimes longer.

The **Appeals Council** can:

- Approve your case, or
- Deny your request for review, or
- Send it back to the judge for another hearing and a new decision which may or may not be favorable.

The last and final stage on any claim is **Federal District Court**. This requires an attorney. Non-attorneys cannot take cases at this level unless they represent with an attorney. These cases can take several years to resolve. In the unlikely case this appeal is approved your attorney is entitled to collect 25% of all the past-due benefits. This level may require a new fee agreement.

Very few cases are approved by the Appeals Council or Federal District Court. Once again, it is not recommended that you appeal these appeals on your own.

Can I Re-Apply while I have an appeal pending with the Appeals Council or Federal District Court?

Yes, you can re-apply. However, if your new claim is approved, past-due benefits cannot cover any time prior to the date of the hearing judge’s decision. A new SSDI claim, if approved, will require a 5-month waiting period whereas an SSI claim will be paid from the day you apply forward.

What if I am not satisfied with my representative?

Sometimes people become dissatisfied with their representative. Perhaps, they are not returning your calls or they don't appear to be doing anything. You do have a right to change representatives. Be careful when you do this. Here are some things to keep in mind:

- These cases move slowly and that is often outside of your representative's control.
- Many law firms use paralegals to communicate with their clients. It is reasonable to ask for periodic communication with the attorney.
- If you decide to terminate your representative they must agree to state in writing that they are withdrawing from your case. They must send a copy to you and SSA.
- Your representative may agree to "waive" their right to the fee if your case is approved. If so, they should put this in the letter to SSA so a new representative knows they will not have to share the fee.

How can I find a representative?

The **disAbility Law Center of Virginia (dLCV)** does not provide representation. You may use the list of referrals provided by the Social Security Administration's Office of Hearing Operations. It is important to find someone who specializes in social security disability in your community and who you can meet with in person. You may also use the following sources to obtain referrals in your community:

National Organization of Social Security Claimants Representatives
Lawyer Referral Service
www.nosscr.org 845-682-1881

National Association of Disability Representatives
Non-Lawyer Referral Service
www.nadr.org 800-747-6131

Virginia Lawyer Referral Service
<http://www.vsb.org/vlrs/index.php/public/vlrs/>
800-552-7977