

SOCIAL SECURITY DISABILITY: FIVE LEVELS OF APPEAL

GETTING YOUR SSDI APPEAL THROUGH THE SSA'S SYSTEM

AN EXCERPT FROM NOLO'S GUIDE TO SOCIAL SECURITY DISABILITY:

TO APPEAL A DENIAL OF SOCIAL SECURITY DISABILITY (SSDI) BENEFITS, YOU'LL NEED TO FOLLOW THE INSTRUCTIONS INCLUDED IN YOUR NOTICE OF DENIAL FROM THE SOCIAL SECURITY ADMINISTRATION (SSA). THE FIRST STEP MAY BE TO FILE A REQUEST FOR RECONSIDERATION. IF THAT FAILS, YOU MAY WANT TO TAKE YOUR CASE TO THE NEXT LEVEL OF APPEAL. THIS ARTICLE COVERS THE FIVE LEVELS OF APPEAL AFTER DENIAL OF SOCIAL SECURITY DISABILITY BENEFITS.

1. REQUEST FOR RECONSIDERATION OF ORIGINAL CLAIM (OR REVIEW OF INITIAL DETERMINATION)

If your initial application for benefits is denied, the first step is to request reconsideration. Your denial notice will include information about your right to appeal, along with a paragraph about your medical condition. Contact your local Field Office to begin your reconsideration appeal. To find the nearest local field office, go to www.ssa.gov and select "Find a Social Security Office."

A reconsideration is a complete review of your claim. It takes place at the Disability Determination Services (DDS) level, but by a medical consultant and examiner who were not a part of the initial decision. This means that any claims examiners and medical consultants who had anything to do with the denial of your initial claim are barred from deciding your reconsideration claim. The DDS grants about 5% of all reconsideration claims.

If your claim is denied again, you will receive a denial notice and an explanation very much like the one you received when your initial claim was denied. The next level of appeal – if you want to pursue it – is a request for a hearing before an administrative law judge (see Item 3).

2. REQUEST FOR RECONSIDERATION OF CONTINUING DISABILITY CLAIM

Once you begin receiving disability benefits, your case will be re-examined periodically through a continuing disability review (CDR). The SSA may end your benefits for a variety of reasons, including:

- a determination that your condition has improved and you can now work, or
- your failure to cooperate in the CDR process.

If you want to appeal, you must request a reconsideration of a CDR at a hearing before a disability hearing officer (DHO). Before your claim goes to the hearing officer, it will receive a second review by a different DDS medical consultant and examiner who could reverse the prior decision to terminate your benefits.

Although the DHOs are not doctors or psychologists, they are allowed to form their own medical opinions about the severity of your physical or mental impairments. As you prepare for the DHO hearing, keep in mind that the SSA must show reliable evidence that you have had significant work-related medical improvement. This is a matter of medical judgment, for which your treating doctor's judgment should carry great weight. If your case is borderline, you should win your appeal and your disability benefits should continue. If your claim is denied, your next step in the appeal process is to request a hearing before an administrative law judge (see Item 3).

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3. ADMINISTRATIVE LAW JUDGE (ALJ) HEARING

If your request for reconsideration (of an initial claim or continuing disability review termination) is denied and you want to appeal further, you must request a hearing before an administrative law judge (ALJ) within 60 days from receipt of your denial.

ALJs are attorneys who work for the SSA's Office of Hearings and Appeals. Most of their work involves upholding or overturning decisions to deny or terminate disability benefits; they also hold hearings on nondisability Social Security issues. Overall, ALJs grant about 67% of the claims that reach them – that means that 67% of disability applicants who take their appeal to an ALJ hearing win their appeal. Some ALJs allow 99% of claims they see.

4. APPEALS COUNCIL

The Appeals Council randomly selects cases for review. The Appeals Council has discretion to grant, deny, or dismiss your request for review. The Appeals Council is not a place where you are likely to find success. If you file late, request a dismissal, or die, the Appeals Council may dismiss your claim without reviewing it. Even if none of these occur, the Appeals Council can dismiss your case without review unless it finds one of the following:

- an abuse of discretion (for example, your hearing was cut short) or an error of law (for example, a claimant was not permitted to cross-examine a witness) by the ALJ
- the ALJ decision is not supported by substantial evidence, or
- a broad policy or procedural issue is raised by the case (such as the ALJ not notifying a claimant that an expert witness would be present at the hearing).

The Appeals Council usually looks for a flaw in the ALJ decision before granting a review. In those situations, your chance of winning is only 2% to 3%. For most people, the only reason to file a request with the Appeals Council is to exhaust all the SSA administrative appeal avenues, which you must do before you sue the SSA in court.

5. FEDERAL COURT REVIEW

The next step in the appeal process is filing a lawsuit in U.S. district court. If you don't yet have an attorney representative, you will almost certainly need one now.

Federal judges hear disability cases without juries. The judge is only supposed to review the case for legal errors, but in reality many judges rule on factual questions, too. They most often believe the evaluations of treating doctors. District court judges reverse ALJs or the AC in at least a third of all cases, often saying that the SSA did not give sufficient weight to a treating doctor's opinion, did not consider pain and other symptoms, or should have asked for assessments of abilities from treating doctors.

Although you have a fair chance of winning an appeal in federal court, it is not an attractive option. Suing the SSA is expensive and time consuming. Even if you win, it might take years to reach that level of the appeals process. Consequently, few attorneys are willing to file a disability case in federal court and fewer than 1% of disability claimants actually take their cases to court.



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