

Jan Dils April Social Security Newsletter

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**PERSONAL INJURY
VETERANS DISABILITY
& SOCIAL SECURITY**
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It's spring time and many families and students will be taking their last break before the end of the school year; others may already be back to school. Regardless, enjoy the spring weather and seasonal blooms.

It is a time for planning travel. My first topic is an interesting one that you may have heard about. There has been a lot of media attention about pets people are bringing on airplanes and other public spaces. While we all love our pets, there is a distinction between service dogs and emotional support pets. Whether booking a flight or renting a home or an apartment, it is important to understand the difference and, equally as important, the laws that protect you as they relate to the American Disabilities Act (ADA).

The next article addresses eight reasons a person may be denied Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). It's helpful to have an understanding going in, but it's also important to know that the system is very complex. We are here to help

JAN DILS
Social Security Disability
law blog

[Social Security Q and A #1](#)

[It's Not Over When It's Over; What You Need To Know About Continuing Disability Reviews](#)

[ODAR, and the Social Security Disability Backlog](#)

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and your consultation is always free. Just [contact us](#).

Last but not least, we look forward to continuing to be your resource in areas of Social Security, Personal Injury and Veterans Disability Law. Have a wonderful spring!

Sincerely,



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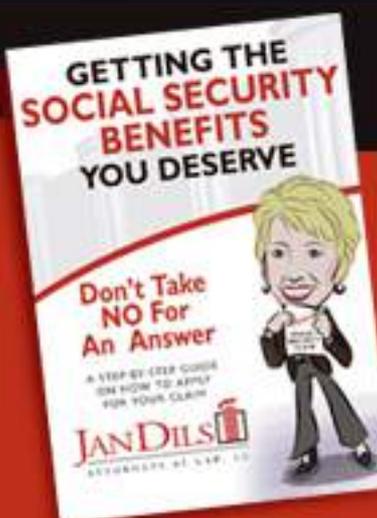
WHAT THE DISABLED NEED TO KNOW ABOUT SERVICE DOGS



What the Disabled Need To Know About Service Dogs and Emotional Support Animals: Access to Public Places & Other Settings

Service dogs play an essential role in the lives of many individuals with disabilities. Federal law grants certain rights and protections to people with disabilities who use guide dogs or service dogs.

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Access to Public Places and the ADA

Different laws govern the use of service animals in different contexts. The Americans with Disabilities Act (ADA) governs the use of service dogs in public places. The ADA guarantees people with disabilities who use service dogs equal access to public places such as restaurants, hospitals, hotels, theaters, shops, and government buildings. This means that these places must allow service dogs, and the ADA requires them to modify their practices to accommodate the dogs, if necessary.

However, these protections only apply to dogs that satisfy the ADA's definition of "service animal." The ADA defines a service animal as a dog that is "individually trained" to "perform tasks for the benefit of an individual with a disability." The tasks a dog has been trained to provide must be directly related to the person's disability.

A "helper monkey" or a cat cannot be considered a service animal under the ADA; the ADA limits the definition of service animals to dogs. In some limited circumstances, the ADA provides that public places should also accommodate persons with disabilities who use miniature horses to perform tasks.

The best-known example of service dogs are guide dogs that help blind people navigate safely around obstacles. Service dogs can also be trained to assist deaf individuals, wheelchair-users and other people with mobility impairments, as well as people who have psychiatric, intellectual, or other mental disabilities.

Psychiatric Service Dogs

"Psychiatric service dogs" are service dogs that provide assistance to people with psychiatric disabilities, such as severe depression, anxiety disorders, and post-traumatic stress disorder (PTSD).

Emotional Support Animals

Many individuals – both with and without disabilities – derive emotional support and comfort from dogs and other animals that are not specially trained to perform specific tasks directly related to a psychiatric disability. The ADA considers such "emotional support animals" to be distinguished from psychiatric service dogs and treats them differently. The ADA does not grant emotional support dog owners the same right of access to public places that it gives to individuals who use psychiatric service dogs. That means that under the ADA, a movie theater, for example, must allow psychiatric service dogs to accompany their owners into the movie auditorium but can refuse to admit individuals with emotional support dogs.



The Difference Between a Psychiatric Service Dog and an Emotional Support Dog

It is not always clear – to staff at public places, and even to some people with disabilities – whether an animal accompanying an individual with a psychiatric disability or impairment is performing a psychiatric service or “merely” providing emotional support. Confusion may result in unlawful and discriminatory treatment of people with disabilities.

The key distinction to remember is that a psychiatric service animal is actually trained to perform certain tasks that are directly related to an individual’s psychiatric disability. The dog’s primary role is not to provide emotional support. It is to assist the owner with the accomplishment of vital tasks they otherwise would not be able to perform independently.

By contrast, an emotional support dog is a pet that is not trained to perform specific acts directly related to an individual’s psychiatric disability. Instead, the pet’s owner simply derives a sense of well-being, safety, or calm from the dog’s companionship and physical presence.

The animal companionship of an emotional support dog can have genuine therapeutic benefits for individuals with psychiatric disabilities and less severe mental impairments. But unless the dog is also trained to work – to independently recognize and respond to its owner’s psychiatric disability – the dog does not qualify as a psychiatric service dog and does not receive the protections of the ADA.

For example, people with social phobia might only feel safe enough to leave their home for food or medication if their dog accompanies them. Such a dog would be considered an emotional support animal.

If, however, the same person is prone to dissociative episodes when they leave home, and their dog is trained to recognize and respond to the onset of such an episode by nudging, barking, or removing the individual to a safe location, then the dog would be considered a psychiatric service dog.

Different State Laws

Some states have laws that provide broader protection than the ADA. For example, while the ADA only applies to qualified individuals with a disability, Rhode Island's law extends those protections to cover trainers of personal assistance animals as well.

On the other hand, over a dozen states have disability discrimination laws that, unlike federal laws, exclude psychiatric service dogs from protection. This does not mean that the ADA does not apply in those states. It means that psychiatric service dog owners simply do not have additional rights under state laws in these locales. As long as federal law applies, the ADA trumps or "preempts" the more restrictive state law.

Federal Laws Granting the Right to Be Accompanied by an Emotional Support Animal

While the ADA governs the use of emotional support animals in public places, two other federal laws, the Air Carrier Access Act (ACAA) and Fair Housing Act (FHAct), govern the use of emotional service animals in housing or on commercial aircraft.

Housing

Under the Fair Housing Act, an individual with a disability may be entitled to keep an emotional support animal in housing facilities that otherwise do not allow pets. An emotional support animal – which can include animals other than dogs – must be permitted as a reasonable accommodation when an individual requires the animal in order to have an equal opportunity to use and enjoy the housing. The assistance the animal provides must relate to the individual's disability.

Airlines

Under the Air Carrier Access Act (ACAA), a commercial airline must permit emotional support dogs and other animals to accompany qualified passengers with a disability on a flight. Airlines cannot require a passenger traveling with a service animal to help with a physical disability to provide written documentation that the animal is a service animal, but the same is not true for a psychiatric service animal or emotional support animal.

In both the housing and airline context, an individual with a disability will likely need to acquire a special letter from a licensed mental health professional documenting the individual's need for an emotional support animal.

Source: <https://www.nolo.com/legal-encyclopedia/psychiatric-service-dogs-emotional-support-animals-access-public-places-settings.html>



SOCIAL SECURITY DISABILITY: 8 REASONS YOU MAY BE DENIED BENEFITS



Social Security Disability: 8 Reasons You May Be Denied Benefits

When applying for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), most people naturally think about the reasons why they should be granted benefits. However, you may want to understand the reasons why you might be denied SSDI or SSI benefits. In some cases, the reasons are beyond your control. In other instances, though, you may be able to avoid doing something that results in a denial.

1. You Earn Too Much Income

One of the most basic reasons you could be denied benefits is that you are earning too much monthly income. The Social Security Administration (SSA) has limits on what you can earn while applying and receiving disability benefits. If you are working and earning above these limits, known as Substantial Gainful Activity (SGA), SSA will find that you are not disabled.

2. Your Disability Won't Last Long Enough or Isn't Severe Enough

To qualify for SSDI or SSI benefits, the Social Security Administration (SSA) must believe that your impairment is severe enough to last at least 12 months or result in your death. The only exception to this duration requirement is for blind SSI applicants.

Many claims – like those based on bone fractures resulting from acute trauma, such as automobile or motorcycle accidents – are denied because they are not likely to cause disability for 12 months. Almost all bone fractures heal in less than a year. However, if you have severe bone fractures that your doctor does not expect to heal within 12 months, you should provide proof of that to SSA. Each case is evaluated on an individual basis.

In addition, your medical condition must cause you severe limitations to qualify for SSDI or SSI. Most claims are denied simply because the applicant's impairment was not severe enough.

3. The SSA Cannot Find You

The SSA and Disability Determination Services (DDS) – the agency that determines your medical eligibility for benefits – must be able to communicate with you regarding your application. If these agencies cannot reach you to schedule examinations or communicate with you about critical matters, your benefits may be denied. If you name a representative (such as an attorney) to handle your paperwork, you may not need to get in touch with the SSA, but be sure to stay in touch with your attorney. If you move while your application is being considered, make sure the SSA knows how to contact you. Claimants (those who are applying for Social Security disability) get denied every day because the SSA cannot find them.

4. You Refuse to Cooperate

Your medical records are vital to granting your disability. If you refuse to release those records to the SSA, your claim will likely be denied. Similarly, the SSA may need additional information about your impairments, either because your treating doctor's medical records are incomplete or because you have no regular treating doctor. In these instances, the SSA will request that you be examined by an SSA doctor, during something called a consultative examination (CE), at government expense. In some cases, the SSA will require you to attend more than one CE. If you refuse to attend or request that the SSA make a determination based on the medical records already in your file, you may be denied disability because of inadequate medical information or failure to attend the CE.

If you can't make it to a scheduled CE because of the time or location, talk to your claim examiner so the DDS can schedule a CE at a time or place that is convenient for you. If you repeatedly fail to show up for a CE, your claim will most likely be denied.



5. You Fail to Follow Prescribed Therapy

If you are being treated by a doctor, but fail to follow the doctor's prescribed therapy when you have the ability to do so, you can be denied disability benefits. However, the SSA recognizes certain legitimate excuses for failing to follow the doctor's orders (which can be for taking medicine, going to therapy appointments, or undergoing surgery).

Failure to follow prescribed therapy can be excused for reasons beyond your control. Some examples follow:

- You have a mental illness so severe that you cannot comply with prescribed therapy.
- You have a fear of surgery so intense that surgery would not be appropriate. Your treating doctor must confirm the severity of your fear to the DDS consulting doctor.
- You physically cannot follow prescribed therapy without assistance – for example, because of paralysis of the arms or cataracts caused by diabetes.
- You don't have the money to pay for treatment.
- Your religious beliefs prohibit you from receiving medical therapy.
- Your doctor prescribes treatment that another doctor disagrees with.

Additionally, for the SSA to deny your claim for failing to follow therapy, the therapy that you fail to follow must be one that is clearly expected to restore your ability to do substantial gainful activity. If your treating doctor tells the SSA that the prescribed therapy is not likely to result in your ability to work, the SSA won't fault you if you don't follow such therapy.

6. Your Disability Is Based on Drug Addiction or Alcoholism

The SSA will deny benefits to someone whose drug addiction or alcoholism (DAA) is a contributing factor to his or her disability. The key factor a DDS medical consultant must consider when making a DAA determination is whether or not the SSA would still find you disabled if you stopped using drugs or alcohol.

7. You Have Been Convicted of a Crime

Certain conditions related to conviction of a crime or imprisonment will prevent you from receiving Social Security disability insurance benefits. They are as follows:

- You were injured while committing a felony and were convicted of the crime. The impairment – or the worsening of an existing impairment – that you suffered during the commission of a felony cannot be used as a basis for applying for disability benefits.
- You were injured while in prison. The impairment – or the worsening of an existing impairment – that you suffered while you were in prison cannot be used to obtain benefits. But you can generally apply for benefits after being released from prison.

However, it's worthwhile to apply for SSDI benefits even if one of the above situations apply to you, because even if you can't get cash benefits, you may be granted a period of benefit-free disability that will

“freeze” your earning records.

8. You Commit Fraud

If you obtain disability benefits by dishonest means, the SSA can terminate your benefits and prosecute you for fraud. If you obtained benefits through fraud on the part of someone working for the SSA, your benefits can also be terminated.

If your claim has been denied for one of these reasons, or for more information in general about Social Security, including navigating the complex Social Security benefits maze or appealing a denial of benefits, and understanding detailed medical listings, don't hesitate to contact [Jan Dils, Attorneys at Law](#). We're here for you.

Source: <https://www.nolo.com/legal-encyclopedia/social-security-disability-reasons-denial-32396.html>

Jan Dils keeps you updated on Social Security disability benefits news and important issues that matter the most. We not only focus on Social Security Disability, we also provide legal assistance for Veterans Disability Benefits . We understand the claims process and specialize in making sure Veterans receive the proper representation needed for receiving benefits. For more information on our Veterans Disability services, please visit www.fight4vets.com

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Jan Dils, Attorneys at Law, handles Personal Injury Claims, Social Security and Veterans Disability for clients throughout West Virginia with offices located in Parkersburg-Beckley-Charleston-Huntington-Logan as well as one additional office located in Charlotte, North Carolina. But regardless of where you are located we are able to serve you or a family member nationwide.

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