

Lesson 10 - Case Correspondence



SSA's All Evidence Rule

Effective date 1/18/17, SSA will begin implementing their new All-evidence Rule. These new requirements threaten serious penalties for those withholding evidence associated with a disability claim. This regulation doesn't scare us! It's really no different from previous regulations associated with evidence submission. We believe that SSA is implementing these rules to make it ever-so-slightly harder for clients to prove their claims. But we have a solution for this that we have been using for years.

It appears that SSA actually believes that advocates are withholding evidence. SSA also mistakenly believes that evidence withholding is the underlying cause of increased awards over the last several years. The real cause is the lack of universal prophylactic health care. Universal access to health care would significantly reduce the costs, number and severity of chronic age related impairments. This in turn would lower the number of disability applicants, reducing the overall financial burden on the disability program. But, healthcare is another story.

After careful evaluation of the new rules, Disability Associates sees no significant reason to change our operational techniques. We have always taught our students to acquire all evidence associated with a case and share that data with SSA. However, with these new rules the amount of evidence required could substantially increase.

Here is a list of the new rules:

Key Requirements of Rule

- ***Representative Must Submit All Evidence Received***

- Must submit all evidence that the representative receives that “relates” to a disability claim
- Must submit favorable *and unfavorable* evidence even if not “material”

- May not withhold evidence based on impairment or date of evidence

- ***Representative Must Inform Agency About All Evidence***

- Must submit all evidence received *and* inform the Agency of all evidence the representative does not receive.
- “You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled.”

- ***There Are Two Privileged Communications Exceptions***

- Confidential communications between a claimant and an attorney or a non-attorney representative are protected unless the privilege is waived.

- Privilege does not cover any fact, e.g., work activity or medical treatment, relating to the disability claim
- Oral communication with a medical source is privileged
- Representative may still protect from disclosure their consultation with any medical source about the claimant’s medical condition. “If a representative takes notes during a discussion with a claimant medical source, those notes are protected from disclosure as work product.”

- Work product (but not facts about a claim) may be withheld, e.g., analysis, theories, and notes

- A representative will have an opportunity to comment on any unfavorable medical opinion submitted
- A representative may obtain another opinion from a medical source
- Rule requires advocacy be based on a complete factual record.

- ***Duty to Submit “All” Evidence Received In Its “Entirety”***

- Must submit all evidence “received” in “its entirety” unless – the exact “same” evidence was “previously submitted” or the Agency instructs “otherwise”
- Submitting received evidence is a clerical task, i.e., does not involve legal judgment
- No medical impairment is irrelevant; evidence relating to *all* impairments must be submitted if received
- Evidence may not be withheld based on time relevance, e.g., prior to alleged onset date (AOD)
- No matter how voluminous the evidence received, it must all be submitted if received

- No duty to request all evidence, but only to submit all evidence received
- No duty to resubmit the “exact” evidence already submitted; must submit a document previously submitted if that document is different in any way from the one submitted
- All “completed” medical source statements, including “completed” forms
- Evidence generated for other purposes, e.g., workers’ compensation
- All *non*-medical evidence that relates to a claim.

• ***Duty to Inform Agency About Evidence Not Submitted***

- Must inform Agency about all evidence *or* submit all evidence that relates to a claim, e.g., workers’ compensation proceedings, etc.
 - Claimant must use “reasonable, good faith judgment” applying broad definition of “relates” to a claim
 - Unclear whether there is a duty to inform Agency about any social media activity that relates to a claim, e.g., evidence of activities of daily living

• ***“All” Evidence Does Not Mean “All” Evidence***

- “All” does not mean literally “all”
 - No duty to memorialize an oral communication
 - No duty to identify laypersons, e.g., family or friends, with knowledge of claimant
 - No duty to inform Agency about potential adverse lay witnesses

• ***Duty to Submit/Inform is Ongoing***

- Duty to submit to or inform Agency of all evidence is ongoing during administrative proceedings
- An ALJ’s closing of the record does not end a representative’s duty
- Final rule may require submitting any evidence that “relates” to a claim after the closing of the record
- Duty to submit to or inform Agency of all evidence includes proceedings before the Appeals Council

Discussion of New Evidence Rules

First, our prediction: Like so many SSA “rules” of the past, we predict that this one will fade into oblivion. For a period of time, SSA may require that you expose the

existence of more evidence. If the new or additional evidence isn't relevant to the case, then it's just additional paperwork. The minute SSA realizes that they have only encouraged the flow of additional paperwork; this rule will quietly pucker out. This rule if emphasized would significantly increase SSA's workload, sabotage productivity and slowdown case processing angering the public.

Representative Must Submit All Evidence Received

All properly trained advocates are taught to request all available evidence associated with the client's application. They are also instructed to turn over to SSA a copy of all evidence received. We have always interpreted “all evidence” to mean all evidence related to the claimant's impairment.

Example: Claimant has alleged lung cancer as his primary impairment. His eye charts would do little to prove the existence or severity of the primary impairment. However, we are still obligated to inform SSA of the eye-chart and send them a copy if possible.

We avoid a problem by suggesting that our students request evidence based on two impairment criteria. These are Acute Onset vs Chronic Disorder. Acute onset impairment is any impairment with a sudden onset such as a heart attack or injuries associated with an accident. In these cases, it would make little sense to request records prior to the acute injury.

Having said that, I would point out that requesting earlier records would be appropriate if claimant has suffered prior heart attacks or acute injuries.

If the claimant suffers from a chronic progressive disorder such as arthritis or diabetes, requesting older evidence makes a little more sense. However, requesting evidence older than a year prior to the earliest possible onset date of an SSDI/SSI case make little sense.

Suggestion

Continue to follow our training instructions in respect to evidence **request** with the following slight modifications. I call them modifications because they don't rise to the level of real change.

If you receive any evidence in a case, make sure you submit a copy of it to SSA regardless of its affect on case outcome. Chances are SSA will get the evidence before you do so don't forget to ask SSA to send you copies of all available evidence.

Representative Must Inform Agency About All Evidence

This is nothing new and is simple case intake. You gather the appropriate forms and you ask claimant the appropriate questions related to his impairment. Once this signed material is received, you forward it to SSA to begin the application process. Part of this intake process is learning from the client what evidence exists.

Our suggestion is that you ask a few more probing historical questions about the impairment to make sure onset is appropriate. Example: Is this your first heart attack? If answer is no and the current primary impairment is heart attack, then probe deeper in the client's medical history.

Here Are Two Privileged Communications Exceptions

This clause relates to your right to client representative privilege or the right to privacy of communications between you. No difference from the past rules and will not substantially change how you represent a case.

Duty to Submit "All" Evidence Received In Its "Entirety"

In this instance there is a significant change in the rule you need to notice. As an advocate, you should request all evidence sources and dates from the client that are relevant to the impairments alleged. The word request is critical here! You request what appears to be appropriate medical evidence.

This step has not changed in how we process cases.

What you receive is another story. What if you receive evidence on disorders not related to the impairments or with dates outside the impairment timeline, you must submit all evidence received. That's it! If you get an eye exam in a heart case, send a copy of the eye exam to SSA and you're covered. If you don't get an eye exam in a non-visual case, there is no need to request it.

Duty to Inform Agency About Evidence Not Submitted

This one makes me LOL. Now SSA wants you to inform them that the evidence exists. Why wouldn't you tell SSA that the evidence exists if you wanted them to process the claim? However if you receive evidence (we've already covered this), even if negative

to the claimant, send copy to SSA.

What if the evidence you don't have but know about, is evidence you told SSA about but you haven't received a copy yet. We address this issue in your training by suggesting you use a process called - follow-up with SSA on your request for copies of evidence.

“All” Evidence Does Not Mean “All” Evidence

- “All” does not mean literally “all”
 - No duty to memorialize an oral communication
 - No duty to identify laypersons, e.g., family or friends, with knowledge of claimant
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No discussion required. Note above exceptions to all evidence.

Duty to Submit/Inform is Ongoing

Here SSA is saying that if you become aware of client evidence at anytime during the disability process, you must let SSA know.

Attorney and Non-Attorney Representatives

Potential sanctions may be imposed on a representative for not “informing or submitting” known information relating to disability. If evidence looks like it’s being held back, SSA may impose sanctions should a pattern of practice be found by SSA.

Overview of Correspondence

Effective communication with the Social Security Administration (SSA) is critical to successfully representing a disability claim. This section covers standard form letters and other materials used for basic communications with SSA.

Correspondence is the engine that drives your case through the disability process. As disability advocates, we use correspondence to:

- Inform others associated with a case.
- Make requests
- Argue our case strategy

Written communication is important in this field because it leaves a paper trail that can be used to verify required actions taken by the advocate. Written communication protects the Advocate from unsubstantiated allegations. If there are any questions about case events what happened and when - the paper trail is the most reliable documentation.

All correspondence sent to SSA, medical sources or the claimant should be neat and professional in appearance. A well-structured, neatly-presented piece of correspondence can go a long way toward helping you win cases and gain customer satisfaction.

You will present written materials in nearly every case you represent. Even if you appear in person, you will submit your argument in writing prior to the meeting to assure that SSA considers all aspects of your position. Written correspondence creates a paper trail that documents your actions from your entry into the case to its conclusion.

Common SSA Correspondence:

___ The Introductory/Cover Letter

___ The Request Letter

___ The Rebuttal Letter

___ The Formal Argument

Introductory/Cover Letter: Used primarily to introduce yourself to a claimant or to inform SSA of your status as the claimant's authorized representative. It can also be used to request documentation, and becomes part of the case evidence.

Request Letter: Used to request case-related materials from the claimant, the claimant's medical or vocational sources or directly from SSA. Also useful if you need to request a specific action be taken by some agency or person.

Follow-up Letter: Used to follow-up with a source on a previous action.

Rebuttal Letter: Used to disagree with an SSA action such as a request for a consultative examination. It can also be used within an Introductory Letter to indicate disagreement with SSA's prior decision.

Formal Argument: The Formal Argument is also known as the Memorandum. It is used to present case facts that you've identified during your evaluation of the case. Creating the Formal Argument usually occurs after you have acquired the needed medical evidence. The evidence is then used to create the argument.

With the exception of the Formal Argument, any correspondence type can be used for more than one purpose. For example, you can use the Cover Letter to request information, provide copies of medical evidence, inform SSA of an event or introduce a new or additional impairment for consideration.

Don't get hung up on correspondence categories! Use your correspondence to get things done. If one letter can do the job, use one letter! If there's an important case issue that must be addressed, use a single letter to explain it. This will assure that the issue is added to the claimant's record.

Note: The section Sample Letters in the Program Syllabus contains a number of examples for your consideration. To help with Formal Arguments, we also include two sample cases within the course syllabus.

Sample Introductory/Cover Letter

A Cover Letter is versatile. Use it to:

- _____ Introduce yourself to SSA, a medical evidence source or a claimant
- _____ Request materials and address case issues
- _____ Ask questions or provide information to anyone involved in a case
- _____ Summarize a case's main issues

_____ Describe the purpose of attached correspondence, such as a Formal Argument

This sample cover letter is asking to waive a face-to-face hearing:

COVER LETTER EXAMPLE

Example - Waiver of Hearing

Date _____

Your full name/Company name _____

Street address _____

City, State, Zip Dear _____: This correspondence is on behalf of claimant _____ SSN (Last four # only), who has applied for disability benefits. He/she is currently on the Administrative Law Judge application level as he/she was denied benefits based on his/her ability to perform less demanding work. I am requesting that this case be reviewed by a presiding Administrative Law Judge and a favorable decision be rendered based on the evidence of record. I am also formally requesting a waiver of our right to attend a face-to-face hearing, as we feel the evidence of record is sufficient to find this claimant totally disabled, as defined within the Federal Code of Regulations and the Social Security Act. Please review the attached formal evaluation of this claimant's condition and consider it in your review of the issues involved in this case. Thank you for your cooperation in this matter.

Sincerely Yours, Authorized Representative

Standard Request Letter

Request Letters have a specific use, as the name indicates. Use them to request action from the client, a medical source, a vocational source or SSA

The Request Letter is most often used to ask a source for medical and/or vocational information, in which case the letter must be accompanied by a Release of Information form signed by the claimant:

Request For Information from SSA

Date

Your full name/Company name

Business Address

City, State, Zip

Dear Social Security Administration Representative [BY NAME IF APPROPRIATE]:

This correspondence is on behalf of claimant _____, SSN (Last four #only), who has requested to be represented by me, [YOUR NAME HERE], on the Reconsideration or ALJ Appeal of his/her denial of Social Security benefits. Attached please find a signed copy of the Authorization to Represent form.

I am formally requesting a Reconsideration of the previous denial decision. Together with this request for Reconsideration, I am asking to be sent copies of all pertinent doctor's reports, hospital admissions, discharge summaries, consultative examinations, X-rays and any special materials relevant in this case dated from (dates of evidence requested Example: (10/1/10 6/30/11)). I would also like a copy of the claimant's Vocational Form SSA-3369 and the SSA-4268 Technical Rationale or Personalized Denial Notice completed by SSA in the prior decision.

Please forward this information to me at the above address at your earliest possible convenience. If fulfillment of this request is not possible, please contact me immediately at (YOUR PHONE NUMBER), so that I may make other arrangements to acquire this important case-related information.

Thank you very much for your cooperation in this matter.

Sincerely Yours,

Authorized Representative

Standard Rebuttal Letter

A Rebuttal Letter usually consists of a brief summary of the previous denial decision along with a concise explanation of why you disagree with it. When

appropriate, you can use the Rebuttal Letter format as an Introductory/Cover Letter or a Request Letter. Rebuttal Letters only come into play on the Reconsideration or ALJ Appeal Level, since they refer to a previous decision. This letter is not a substitute for a Formal Argument.

In this example we use the Rebuttal Letter format as a Cover Letter that also introduces us to SSA as the claimant's authorized representative. In this case, we must attach an Authorization to Represent form to the letter.

Rebuttal Letter/Cover Letter

Date

Your full name/Company name

Street address

City, State ZipDear Social Security Administration Representative [BY NAME IF

APPROPRIATE]: This correspondence is on behalf of claimant _____, SSN (Last four # only), who has requested to be represented by me, [YOUR NAME HERE], on the [RECONSIDERATION or ALJ APPEAL] of his/her prior denial of Social Security benefits. I have attached a copy of the Authorization to Represent form signed by both the claimant and myself. On behalf of this claimant, I have reviewed the issues involved in the Initial decision which states that Social Security believes my client capable of performing light work and therefore capable of returning to his/her past work as an accountant. My preliminary interview with the client leads me to believe that he/she is incapable of any type of substantial work. It is my belief that (CLAIMANT'S NAME) is unable to sustain any work, including work that requires less physical or mental demand. I am further asking that you reconsider your prior decision based on (BRIEF DESCRIPTION OF ADDITIONAL EVIDENCE) and/or (NEW OR ADDITIONAL IMPAIRMENTS). Please reconsider your prior decision and award disability benefits to (CLAIMANT'S NAME) as quickly as possible. Thank you for your cooperation in this matter.
Sincerely Yours, Authorized Representative

Important Elements of Any Letter Type

No matter what the letter type, SSA requires that it contain certain elements. The following information should be included in all SSA correspondence:

- Date
- Advocate's name and address (can be a letterhead)
- Claimant's name and the last four digits of his/her SSN
- Statement that you are the claimant's authorized representative
- BRIEF statement of the reason for the letter - get to the point and ask for exactly what you want
- Summary of claimant's allegations and/or a list of alleged impairments
- Sources and dates of any medical or vocational evidence requested
- Clarity and brevity if informing SSA of an issue
- List of all materials that accompany the letter

If requesting a claimant's folder, say so directly. If asking for a specific piece of evidence, provide the name of the sources, dates, report types, etc.

Think Before You Write!

The type of information that you provide will depend on the letter's purpose. Do not include anything that isn't necessary. For example, don't waste time arguing the case in a request for medical documentation!

Be careful what you disclose in correspondence, as you could unknowingly harm your client's case. Never criticize your client or SSA directly. Your position as the claimant's authorized representative makes your letters part of his/her official SSA file. Your correspondence is part of the evidence of record.