



In this lesson we will discuss the SSA appeal process. Social Security's administrative appeals operation is under the Office of Disability Adjudication and Review or ([ODAR](#)). To make this lesson easier to understand, we will provide multiple links to the various hearing topics on SSA's website throughout this lesson. Keep in mind that all rules and regulations associated with the initial application will hold true on appeal. There are three appeal levels an advocate should be very much aware of. These appeal levels are:

Reconsideration or First Appeal Level

Administrative Law Judge (ALJ) or Second Appeal Level

Appeal Counsel - Third Appeal Level

Our experience has shown that if you do not win your case by the second appeal level (ALJ), you probably aren't going to win. There are exceptions to this prediction that we will discuss later in this lesson. You might recall from Module One, Lesson three that SSA has been undergoing several procedural changes to improve customer service and case processing efficiency. SSA refers to this improvement process as the Disability Service Improvement Program (DSIP). See DSIP chart below:



Reconsideration or First Appeal Level

I've received several calls from new students informing me that there is no longer a reconsideration appeal level. This is incorrect. Although it is often referred to as the first appeal level, it is still a reconsideration of the initial decision none-the-less. This means that the reconsideration appeal level still exists. The differences are the options for processing a reconsideration claim.

On first appeal (reconsideration), Social Security has added additional options that can greatly speed up the decision process. A claimant's case can still be sent back to the DDS for further development if need be. However, a reconsideration case can also be processed by a Hearings Officer (HO), Federal Review Officer (FRO) or Administrative Law Judge (ALJ).

When a case is denied on the initial level, it is sent to the FRO for a quick review. If additional evidence is needed, the FRO can request this data or send the case back to the DDS for further development. If a recon decision can be made, the FRO will process the case and forward it to the appropriate DO. The DO will send out the denial notice to the claimant with instructions for applying to the next appeal level.

Not all states process appeals in the same way. The differences are superficial and depend on such factors as staff availability and case volumes. Regardless of who makes the recon decision, the case is processed as usual. The applicant or his representative may request a hearing if the reconsideration is a denial or there is a question of an earlier onset date.

[Requesting Hearing Link](#)

Each claimant or his representative may request a hearing if the case is denied on the first appeal or recon level. This request is for the second appeal level also known as an ALJ Hearing. Since SSA covers the functional aspects for requesting a hearing on their website, it would make no sense to repeat it here. [Click here](#) to access the SSA hearing website and review the requesting a hearing segment.

[Advice for an ALJ Appeal](#)

When you receive a denial notice on the first appeal level, your client will have received one too. He'll be wondering what happens next. Call the claimant **immediately** to reassure him that all is not lost and that you recommend applying for the next appeal level.

To request an appeal, you have three options. [Request online](#), Prepare an Appeal Request Letter or use the ALJ Appeal request [Form 501](#). Any of these three approaches is acceptable when applying for an ALJ hearing. An ALJ request should be submitted to ODAR.

While preparing to apply, begin collecting any new evidence if appropriate. Then send ODAR:

1. [A signed Appeal Request Letter or Appeal Request Form 501](#)
2. [Copies of new or ignored evidence.](#)
3. [A signed copy of your Formal Argument.](#)

It's best to send all this correspondence at roughly the same time, because once SSA has the Appeal Request you have **ten days** to submit any new evidence and your Formal Argument. Remember, you have **sixty days** from the date of the previous decision to submit your Appeal Request. Use this time to collect and prepare your case. With this approach, when you finally do submit your appeal request, you'll already have any new

evidence and a prepared argument.

If you cannot put an effective application together in time, submit your Appeal Request and ask for an extension. As with the Reconsideration Appeal, you must have **good cause** to extend an ALJ Appeal Request deadline.

Extending the Deadline

If you're new to the case at the ALJ Level, you may find the claimant has already run out of time to file the appeal request. You may need more time to prepare the case and create a Formal Argument. In this situation, request a **good cause** extension of the sixty-day appeal request period. SSA accepts the following as good cause for an extension:

1. Claimant did not receive prior decision notice
2. Claimant is incompetent and unable to understand decision
3. Claimant was medically unable to respond to the notice
4. SSA's denial letter or actions confused the claimant
5. Claimant is or was hospitalized at the time the notice was delivered.
6. Representative never received a decision notice
7. Claimant is out of state and unable to apply
8. There was a death in the family of the claimant or representative
9. Important records were damaged or destroyed and need to be replaced
10. Claimant's third-party did not notify you of the decision.

In reality, SSA accepts almost anything reasonable as good cause to extend the sixty-day appeal period.

Face-to-Face Hearing Options

Keep in mind that scheduling a hearing can take a long time. The actual hearing may not take place for months after your request. Weigh the advantages and disadvantages of waiting for the face-to-face hearing on a case-by-case basis. You also have the option of requesting an on-the-record review. With this approach, you are waiving your right to a face-to-face hearing. While an on-the-record review may not help your case, it will significantly speed up the case decision.

Advantages of a Face-to-Face Hearing

1. The ALJ can see your client's physical limitations.
2. You can immediately clarify any questions related to the evidence.
3. Your client has the opportunity to speak on his/her own behalf (sometimes a good thing, sometimes not!)
4. If the case is allowed after the wait for the hearing, your fee will probably be a larger because more time has elapsed since the onset of impairment

Disadvantages of a face-to-face hearing:

1. It can take forever to get a hearing scheduled because of the tremendous backlog of cases in many states
2. If the Judge dislikes you or your client, it may prejudice the decision
3. You might be shy! Of course this isn't a good reason to avoid a hearing!
4. Inconvenience of traveling to the hearing location

Waiving the Hearing

If you choose to opt out of the hearing, you must request a waiver. You can either use Form **4608** or you can submit your own written request. In your request letter, make sure that you specifically state your desire to waive the ALJ hearing and ask that the decision be made "**on-the-record**". Using this approach usually means that a decision will be made much faster than if you wait for a hearing.

Attending the Hearing

If you opt for a face-to-face hearing, prepare to present your Formal Argument orally before the ALJ. Three secrets to a successful hearing are:

1. Not being intimidated by the process
2. Keeping the focus on the case issues
3. Tolerating the attitude of the ALJ

A face-to-face hearing is an opportunity for you to present facts to a Hearings Officer or ALJ on your client's behalf. Your argument will focus on the limiting effects of any new,

previously overlooked, under-valued or misinterpretation of facts. There's no one-way to handle an ALJ presentation, so each one is somewhat unique.

Usually the ALJ will request your statement and then allow you to ask the claimant questions related to his case. You'll also need to be prepared to rebut the vocational specialist. This process is discussed later in this lesson. Whatever you do, be curious and professional! Do not allow the ALJ, Voc Specialist or anyone else disrespect you or your client. You are the authorized representative under the law and you must demand respect for your position.

Remember, more cases are won at this level than any other. *Why?* Because the ALJ's power to award benefits is not restricted by SSA's internal policies. An ALJ can use his own interpretation of the facts and grant the claimant's benefits.

The ALJ Requests Your Presence

It's possible although unlikely, that the ALJ will ask you to appear before him/her despite your waiver request. If this happens, **GO!** *It's not all that bad!* Before attending, review your case and be prepared to answer any question the Judge may ask. Your responses should be consistent with your case argument and you should always stick by your opinion.

If an ALJ requests your appearance and you cannot attend, inform ODAR in writing. Explain why you can't attend and ask again for an on-the-record review. Most Judges are understanding and will either make an on-the-record decision or reschedule the hearing.

Note: If you're asked to attend a hearing, you're entitled to reimbursement for all expenses incurred, including things like airfare, hotel and food. Travel expenses are only reimbursable for hearings held within your state. This rule will change in the near future due to the current trend for national representation.

Be sure to fill out and submit a Request for Reimbursement Form at the Hearing Office. You are eligible for reimbursement regardless of case outcome. If the ALJ requests your appearance, you're probably entitled to travel expenses. [Click here](#) for more on travel reimbursement.

Preparing for Hearing

Here are a few suggestions to help you prepare for a hearing:

1. Don't be intimidated by the process. We all make mistakes. You're the claimant's authorized representative and you have the **absolute** right to be treated with respect. If you're not treated with respect, this is grounds to appeal the proceedings and request a change of ALJ.
2. Carefully read and summarize the facts of the case. Outline your argument, listing the facts that best support your client's position. Make sure you have supporting evidence at hand. Examples of supportive evidence are, Doctor's, hospital admissions, surgical notes and written statements from individuals (ADLs), etc., who have witnessed and support your client's restrictions.
3. If a document on file contradicts your position, don't panic! Your client's condition may have changed or the statement may simply be incorrect. If you find contradictions in the evidence, be prepared to explain them away.

Note: If you find a report in the claimant's evidence that contradicts the predominant evidence, use the other data to neutralize it. For instance, if a doctor's report claims improvement in a condition, present other documents showing that any improvement was temporary or sporadic. Make sure the contradictory report predate a report of increasing symptoms. The more recent a report, the more valid it will appear to the argument.

Counter doctor's reports with other doctor's reports. Using doctors to contradict doctors is using strength against strength. In a situation of contradictory evidence, SSA must give the claimant the benefit of a doubt over a single report.

4. Consistency is important! If your client was not been treated for a condition on a consistent basis, you'll need to explain why.

Example: *"Due to financial problems, Sally (the claimant) could not afford consistent medical care despite the seriousness of her illness."*

Make sure to include the following in your presentation:

- Point out when your client became totally disabled
- Starting with the primary diagnosis, list all alleged impairments
- Point out when your client's impairments began and how each progressed to the point of preventing work
- Discuss how impairments interfere with your client's normal daily activities
- Explain how impairments affect your client's ability to do work of any type
- Present medical evidence that supports each alleged limitation
- List medical sources in chronological order to make it easier for the ALJ to follow the sequence of events
- Have a written summation of your argument on hand to present to the ALJ, even if you previously mailed a copy of the full argument. This allows you to present a last-minute addendum if medically supported, may be what wins the case! The ALJ will read your addendum and use it in his/her decision. This is one of our most effective techniques for winning at the ALJ Level.
- In your argument summation, list any efforts your client made to return to work. This shows the Judge that he/she is not a deadbeat. If the ALJ believes that the claimant would prefer to work, he/she will gain credibility with the Judge.
- Start your presentation by rebutting evidence SSA used to support their denial. Emphasize evidence that works in your favor. Then bring in new or overlooked evidence that further supports your position.
- Let the ALJ direct the hearing. If he/she asks questions, answer them as best you can. **Remember - you're not Perry Mason!** Stick to case elements that are clearly supported by the client's medical evidence.

During a Hearing, there will not be any flowery speeches made by either you or the ALJ. Be mindful of the Judge's time and allow the proceedings to move forward. Be polite, professional and firm in your opinions - even if the Judge disagrees with you. No matter how much experience you have in this field, you'll still make mistakes. Learn from your mistakes and use them to make yourself a better advocate. Your first few hearings will sharpen your skills and increase your confidence. The more hearings you do, the better you'll become!

Handling Vocational Specialists

A Vocational Specialist (VS) may attend the hearing to argue that despite the claimant's impairment, he is capable of performing his/her past work or other less demanding work. The VS will site three jobs he thinks the claimant can perform. Review Module 4 Vocational Analysis.

Prior to the hearing, the VS will have done a full Vocational Analysis using the ONET or a DOT to determine what jobs that claimant might be capable of performing. These jobs must fall within the claimant's RFC. Please note that SSA will have an RFC opinion and you will have an RFC opinion. If your argument has supporting evidence, your opinion will win out.

The VS will lay out his findings, usually basing his/her case on the RFC that SSA created. For example, SSA might feel that the claimant has a remaining RFC for sedentary work. This means that given the claimant's age, education and remaining skills, he/she can

perform sedentary work despite the impairment. In this instance, the VS may name three jobs in the national economy that are consistent with claimant's remaining RFC.

You counter the Vocational Specialist by disagreeing with the main premise of his argument, which is that the claimant has an RFC consistent with Social Security's opinion. You do this by presenting your evaluation of the case, which includes a revised RFC to a lower level. It just so happens that your RFC would result in an allowance. You must have convincing evidence to support the lower RFC and it must rule out other less demanding work or Step 5 of SA.

Requirements for Sedentary Work

There are several common-sense requirements for sedentary work. To perform this level of work a claimant must be able to:

1. Sit for over 15 minutes without needing to change posture or position. If short periods of sitting aggravate the client's condition, he/she **cannot** be denied to a job that has this requirement.
2. Sit for prolonged periods without developing pain. If the client experiences this symptom, the pain itself is a reason enough to lower the RFC.
3. Be able to concentrate. Pain and other symptoms can significantly reduce a claimant's ability to concentrate and further reduces his ability to perform sedentary work.
4. Focus on the task at hand. If task focus is a mental issue that interferes with the claimant's ability to perform work, it can be used to lower his skill level. SSA cannot deny a person to a less demanding job requiring a greater skill level than the claimant has left. This is true even if he/she once had the skill.
5. Ability to use his hands for fine movement. Even the least skilled sedentary job requires the ability to use your hands for fine and gross manipulation of objects. If your client has lost this capability, he/she will not be able to perform the demands of sedentary work.

Hearing and Vision

Hearing and vision limitations alone do not guarantee an allowance. Most folks who suffer from such sensory disorders are able to adjust to some kind of work. If a person is deaf or blind **in addition** to having another serious impairment, the combination may result in an allowance.

Example: SSA has given your client Lisa, an RFC for sedentary work. One key requirement of sedentary work is an ability to sit for at least 15 minutes without having to change posture or position or without developing pain or aggravation of the impairment. The VS says Lisa

can sit for 15 minutes or longer. You focus your counter argument on SSA's RFC, pointing to evidence that clearly shows that she can't sit for more than ten minutes without increased pain and a need to change posture or position.

There are **no** sedentary jobs in the national economy for a person who's incapable of sitting for longer than 15 minutes. Based on this restriction alone, your argument for a less than sedentary RFC appears valid. No matter what skill SSA alleges that Lisa has, you have counter evidence showing that she can't sit long enough to perform the work. Lisa is lucky to have you as an Advocate!

Conflicting RFCs

There are always two conflicting RFCs in a disability claim. SSA's RFC is for sedentary work, which supports a denial; and your RFC is for less than sedentary work, which supports an allowance. Looks like the evidence is in your favor and Lisa wins!

Always direct your argument at the SSA's RFC and **not** at the VS although tempting. To avoid personal confrontations, focus on your concern for your client's well-being with statements such as: *"In all fairness to the claimant Your Honor, she cannot be expected to **perform** or **sustain** sedentary work as described by the Vocational Specialist, Mr. Smith."* **Never make this personal!**

Point of Argument:

State your position clearly and unequivocally!

Always end your vocational argument with a comment like: *"Your Honor, given my client's physical limitations that are strongly supported by the medical evidence, I do not believe that he/she is capable of sustaining work of any type. I believe my client to be in great physical distress as a result of his/her condition and I believe he/she should be found totally disabled."*

If Your Authority is Challenged

If your qualifications are questioned, point out that SSA's rules permit non-attorneys to act as authorized representatives regardless of background. In short, affirm that you have every right to represent! **Do not be shy on this point!** If necessary, cite **Code of Federal**

Regulations (CFR) 410.685, which specifically authorizes anyone who meets SSA's basic qualifications to act as a representative. Such personal challenges are rare, but it doesn't hurt to be prepared for them.

Why would you be challenged by an ALJ? Here's the reality! By training to be a Disability Advocate, you have stepped into one of the most lucrative representational services in this country. Recently, lawyers have been jumping on the SSA disability bandwagon like a pack of demented circus monkeys. With an aging population, attorneys smell opportunity like sharks bloody water. They don't want anybody encroaching on their territory! But the truth is Disability Advocacy was never their territory in the first place. Some legal professionals resent the growing number of non-attorneys in the field. *Our opinion?* We'll live with the resentment and collect our well-earned fees.

After the Hearing

After a hearing, the ALJ has ninety-days to issue a decision. Unless you brought up new allegations or the need for additional evidence, the decision will be made. Sometimes a Judge might want additional evidence before making a decision. He may request an additional examination or that the case be remanded for further development. Although new allegations prolong the case, it is your responsibility to look out for your client's best interests. Sometimes, new or additional evidence may actually strengthen your case.

If the ALJ wants more Case Development, you'll be notified at the hearing or by mail. If it is a minor thing like a single report, the ALJ's staff will probably request it. If there is significant new evidence or an additional examination is required, the case may be sent back to the DO or DDS. If you can get the evidence faster than SSA, volunteer to do so.

If you get the evidence first, send a copy directly to the Judge. If you feel that a request for a consultative examination is warranted, let the Judge know at the hearing. **But be**

careful! Do not challenge an ALJ's opinion unless your position is strongly supported by the evidence.

Delays aren't all bad! The longer a case takes to finish, the more likely it will have back benefits. The more back-benefits, the larger your fee. In most cases the Judge will rule based on the evidence in the file and notify you within ninety days. If he/she is going to allow, a compassionate Judge will let you know their decision immediately.

The ALJ Denial Decision

If the case is denied, you'll receive a decision letter from ODAR explaining why the ALJ thinks your client is not disabled. The decision will be presented in a PDN. If allowed, you and the client should receive an award letter.

If the decision is an allowance or is partially favorable, submit your Fee Petition Request

Form with attachment to SSA and bill the client (if you're not certified). A **partially favorable decision** means that the ALJ agreed that your client is disabled but disagreed with the onset date. This is also referred to as a partially favorable decision, which is much better than a denial.

If the ALJ denies the case, it's over for you unless you have an issue with how the ALJ handled the case. If you strongly disagree with Judge, you have the option of taking the case to the third appeal level known as the appeal counsel. You also have the option to request a different Judge if you feel that prejudice is an issue. Keep in mind that you'll probably have to face the same Judge in another case so keep things cool if possible. Don't burn bridges unless you absolutely have to in order to serve your client. Keep the client's interest at heart, not your own.

Appeal Council Review

If you feel that your client was not given a fair evaluation or you strongly disagree with the ALJ's decision, advise the claimant to consider taking the case to the Appeal Council Level. In this situation, the claimant has three options:

1. Give up trying to win disability benefits
2. Start the application process all over again
3. Apply for an Appeal Council review of the ALJ decision

Depending on the circumstances, you might want to recommend taking the case back to the beginning. You could actually win and finally close the case. In general, we believe that if you haven't won at the ALJ Level, you probably won't win. But that's not to say you can't win! This training course is not intended to train Advocates to go beyond the ALJ Appeal Level, although it is legal for you to do so. We recommend that if the claimant chooses to fight the decision at the Appeal Counsel Level, he/she should get an attorney. But if you do this, the attorney gets the fee after you did all the work. If you decide to do this, recommend an attorney referral you can trust. Consider creating a fee sharing agreement so that both of you are compensated if the case is eventually allowed.

Keep Your Client Informed

Keep your client informed throughout the entire appeal process! Communicating is often the key to a perceived high quality of service. Our experience is that the better informed the clients, the higher the satisfaction rate. Establishing open communication goes a long way toward helping you to build a lasting and successful advocacy service.

As previously mentioned, our new Olivia Prime software has several built-in communication features to assist you with this vital function. One of the most powerful of the Olivia communication features is the ability to assign a customer control panel (CP) to a client. A

control panel enables you to exchange information with clients in the most secure method possible. To find out more about this exclusive feature, visit our [Olivia Prime](#) Website.

Summation

The ALJ Appeal is important because it is often at this level that the case is won. This lesson have taken you through the hearings process from requesting an appeal to the pros and cons of a face-to-face hearing. We have also shown you how to handle a hearing should you choose to go. For more information about the SSA Hearings, visit SSA website by [clicking here](#).