

## Developing a Case Strategy



In the mechanics of vocational analysis, we provided an extensive number of basic strategies for winning cases. This segment contains some additional tricks to improve the effectiveness of your case strategy.

In disability representation, when we say case strategy, we're really talking about vocational analysis. Why? Because in disability representation there is really only one strategy and this single strategy is driven by the fact that there is only one way to win a disability claim other than meets or equals the listing, and that is the medical vocational allowance. Yes, there are many ways to approach this singular strategy, but many approaches do not change the fact that there is only one strategy!

### Vocational Rules Are Nice

The Vocational Rule table is a neat tool for developing a case strategy. The VR forces the advocate to consider a claimant's age, education, skill level and RFC in determining what combination of these factors would result in an allowance.

Of course, you can just as easily perform this same function in your head if you realize a few simple facts.

- a. If the claimant is under age 49, you'll need a less than sedentary RFC to win.
- b. The higher a claimant's education, the more likely he will retain transferable skills.
- c. Rule out other less demanding work not past work.
  - 1. If the claimant is fifty to fifty-four, argue for a less than sedentary RFC. If the claimant is 64, argue for a less than sedentary RFC. Once you've trained yourself to argue for a less than sedentary RFC no matter what, you'll strike fear into the hearts of the SSA vocational specialist. Less than sedentary is so

powerful, that I had these words carved into the handle of my six-shooter.. I'm a collector!

If the claimant is fifty-five to sixty-four, a sedentary RFC will usually result in an allowance unless the claimant is highly educated and retains a high level of transferable skills. If this is the case, argue for a (guess what?) less than sedentary RFC.

Regardless of the claimant's age, always argue for the lowest possible RFC that the medical evidence supports. Follow this simple rule and you will win countless cases.

Strategy: Highly educated claimants often have transferable skills. To avoid a denial, look for negative mental symptoms that may be used to further reduce his RFC.

For example, a person with a severe back disorder may suffer from a great deal of pain, which can interfere with his/her ability to learn, remember or concentrate. A reduction in any of these three capabilities lowers the claimant's ability to transfer his/her skills to other work.

2. Educational Criteria: Education is also an important factor. The less education the claimant has, the less likely he/she can adjust to other less demanding work.

3. Work History: Claimants with a history of physically demanding work with less than thirty days training have the most difficult time adjusting to other work. Add advanced age and a reduced education and you have a person with poor adaptability to other work.

4. Transferable Skills: These are the skills the claimant can use despite impairment-induced limitations. These skills are usually associated with the claimant's past work or vocational education.

For example, your client, Dorothy, worked as a financial auditor. An auditor must have many skills in math, reading and data organization in order to do the job. These skills transfer to other types of work. Dorothy will be denied benefits unless she has a secondary impairment that further limits her ability to use these transferrable skills.

5. Debilitating effects of the disease: SSA defines a severe impairment as one

that causes significant physical or mental limitations. The more intense the disease state, the more likely it is to result in serious physical and/or mental limitation. Pay close attention to the disease states suffered by your client, making sure that you take into account every limitation it causes.

6. Medical Findings: The stronger the medical evidence (signs) supporting the claimant's diagnosis and limitations, the more likely you will win the case. For maximum impact, match the impairment with its supporting medical evidence in your Formal Argument.

7. Claimant's Perception: If a claimant believes he/she is truly unable to work, he/she is a much stronger client for your service! You see, those who are truly disabled almost always act the part. If the disabled person states that he cannot walk without pain, he probably will manifest this limitation even in the privacy of his own home. This kind of consistency can really help you win the case.

### Limiting Client Behavior

A client's limiting behavior enables you to place evidence into record in a disability claim. You do this by collecting the claimant's Activities of Daily Living (ADL). ADLs produced either by the claimant; family or physician can be presented as evidence to SSA. ADLs, if consistent with both the claimant's allegations and the medical evidence, are useful in supporting a lowered RFC. With experience, you'll realize just how incredibly powerful ADL evidence can be!

You can argue for any RFC that you feel is appropriate and will result in an allowance. However, you must provide valid evidence to support any symptoms that are causing a limitation. This is easier if the case is well documented and the claimant behaves in a manner consistent with the RFC.

The claimant must not exceed (especially in public!) the activity level he/she claims to be limited to. If your client inadvertently tells SSA that he plans to paint his barn this weekend despite his alleged inability to do sedentary work, SSA will definitely assign him a higher RFC and his case will be denied based on this inconsistency.

Always fully exploit the seven factors listed above and use them in your formal argument to lower RFC. These case criteria are extremely important to SSA, so make them important to you! Properly emphasized in your Formal

Arguments, these seven criteria can significantly increase the number of cases you win.

## Formulating a Case Strategy

Customize your case strategy based on the facts of the case. You should, for example, develop a different approach for a case involving a thirty-eight-year old than a sixty-year-old because SSA views them differently. If you didn't know that SSA's disability criteria are slightly tougher for the younger person, you might approach both cases in the same way, costing the younger claimant his/her benefits.

## No Two Cases are Alike

Pay close attention to case details that might be crucial to designing a winning strategy. For example, with individuals under forty-nine years old, the evidence could indicate a severe impairment without necessarily supporting a total disability. In this common situation, you can improve your argument's effectiveness by citing subtle symptoms that are documented in the claimant's evidence of record.

Here is a simple formula that demonstrates my point:

**RFC = Diagnosis + Signs + Symptoms +  
Limitations**

**The above formula reads: RFC = diagnosis plus  
signs,  
plus symptoms, plus limitations.**

Limitation is defined by impairment severity that equals the sum of a claimant's signs, symptoms and limitations. Signs are defined as medical findings and symptoms are defined as physical manifestations of the disease. Symptoms lead to limitation that restrict the claimant's ability to work and lead to an allowance decision.

The more definitive the medical sign, the greater the impairment severity. The more pronounced the client's symptoms, the greater the limiting severity. The

greater the impairment severity, the more convincing is the argument for the alleged limitation. The more severe the limitation, the more likely it will restrict the claimant's ability to perform work. Inability to perform work is the key to allowance.

## Tips for Designing Winning Case Strategies

Here are some of the things that we have used to create winning strategies:

- Pain can lower RFC
- Collateral sources can provide valuable documentation
- Don't forget the loose nexus requirement!
- Compromises can win cases
- Closed period cases meet less resistance
- Subjective strategies can put you over the top

## Pain as an RFC Issue

Pain is one of the most powerful criteria you'll ever use as a Disability Advocate. Think of it as live ammunition in any case where the claimant alleges severe pain. Pain can be used to significantly reduce a claimant's RFCs.

Years ago, a number of claimants challenged SSA in court because they felt their claims of pain had not been evaluated fairly. They argued that SSA ignored the effects of pain in creating their RFCs, which resulted in wrongful denial of benefits. The judge agreed, and these applicants were awarded all back benefits. As a result, SSA now considers pain as a significant limiting factor in all cases where it is alleged and documented.

The key question in this landmark case was whether or not SSA had given proper weight to pain's effects in determining a person's ability to adjust to less demanding work. Not only were many people awarded benefits that had previously been denied, but SSA also had to rewrite much of its adjudicative policy concerning pain to assure a consistent approach in future cases. SSA

still struggles to effectively address the pain issue, which has grown into the most powerful, but hardest to substantiate, subjective symptom.

## The Six Pain Factors

In order for SSA to seriously consider a pain allegation, it must be thoroughly documented. We have found that there are six basic factors that determine the weight SSA gives to a complaint of pain. The better you document a pain allegation using these six factors, the more likely SSA will accept your RFC. To properly document pain, you need the following information:

### 1. Description of the pain

1. Location or site of the pain
2. Quality of the pain (i.e., sharp, dull, aching, radiating, etc.)
3. Duration of pain – when it occurs; how long it lasts
4. Intensity - Degree of sign/symptom experienced by the claimant

### 2. Causation and/or aggravation of the pain - standing, sitting, bending, etc.

### 3. Relief of the pain - sitting, lying down, extremity elevation, etc.

### 4. Physical limitations caused by the pain

### 5. Pain medication side effects that cause additional symptoms, thus further limiting the claimant's RFC

### 6. Effect of pain on other types of limitations as part of the RFC justification

Example: Ed has a bad knee with major damage visible on x-rays (signs). SSA assigns a light work RFC. You discover that as a result of the claimant's severe knee pain, claimant's RFC must be further reduced to sedentary. You've just improved Ed's chances of winning!

In order to win a case using pain, be sure that the claimant's Activities of Daily Living (ADL) substantiate both the medical findings and all alleged limitations.

Example: Linda states that she is unable to bend at the waste due to pain. You have found medical evidence to support this alleged restriction. If she then states on her ADL form that she cuts wood for about a half hour every day, this

inconsistency will completely destroy her credibility regarding her bending restriction. You won't be able to use this alleged bending limitation as ammunition for lowering Linda's RFC.

**Note:** Use the pain issue whenever possible as a means of further reducing a claimant's RFC. Remember, pain limitations may be both physical and/or mental in their manifestation.

## Collateral Sources

A credible collateral source of evidence is anyone who has consistently observed your client's limitations. You can use collateral sources to strengthen both physical and mental allegations. This is especially useful in cases where the claimant is less than forty-nine years old and needs more documented impairments to further reduce his/her RFC.

Credible collateral sources include physical therapists, counselors, caregivers and/or family members or friends who have regular contact with the claimant. A medical professional that has worked directly with the claimant is even better. Use as many collateral sources as you wish to support any limitation alleged by the claimant as long as all impairments are supported by medical evidence.

## Loose Nexus

Within any disability argument there must be a direct relationship between the impairment, the evidence and the alleged limitations. This three-way relationship is called a loose nexus. The Social Security term loose nexus defines the logical relationship between a disease, its symptom and the limitations caused by the symptom. If the claimant's disorder is not supported by the evidence (signs) and/or it demonstrates symptoms that do not fit the disease, there may be no loose nexus.

If there's no loose nexus, SSA will **not** accept the limitation, which will result in a denial of the case. By pointing out the logical relationship of impairment, symptom and limitation, you make it easier for SSA to accept your argument.

## Compromise Can Win Cases

Sometimes an Administrative Law Judge may be hostile to a disability applicant and reluctant to award benefits. One strategy for reducing the ALJ's reluctance, especially in a marginally convincing case, is to offer a compromise. Two effective compromises the astute Disability Advocate can use are:

1. The Diary Date Compromise
2. The Onset Date Compromise

**The Diary Date Compromise:** The Diary date is a future date set by SSA to re-evaluate a claimant's impairment to determine if disability continues. This date is also referred to as the medical re-examination diary.

In this strategy, the Advocate asks for an allowance now but a shorter time interval until the re-examination diary date – say, three years instead of seven. If the claimant is medically improved at diary, he/she can be removed from benefits. If necessary, the Advocate can go even further and suggest a two year diary in order to reduce the ALJ's reluctance to award benefits.

The ALJ may go for this reduced re-examination diary because it means the case will be re-evaluated sooner. This means that the claimant will receive benefits for a shorter period of time before again being reviewed by SSA. This gives SSA the opportunity to remove the claimant from the rolls much faster than usual, lowering the ALJ's reluctance to allow. This compromise also shows that the Advocate is concerned about the cost of entitlement and is willing to do his/her part to be responsible with public funds. The shortened diary strategy works best on those under age forty-nine.

**Onset Compromise:** Another effective approach to lowering an ALJ's reluctance to allow is the Onset Compromise. In this technique, the Advocate bargains for a more recent onset date than the one originally alleged by the claimant.

**Example:** Your client Allen alleges that he became disabled on 1/1/13. The case is at the ALJ level and the Judge is hesitant to award benefits. In order to get an allowance, you feel you need to demonstrate to the ALJ that you and Allen are willing to compromise. You and Allen talk it over and agree to suggest a new onset date of 6/1/13, which will lower Allan's overall back benefit award.



This reduces the ALJ's reluctance, and she allows the case.

Do not use this approach if there is strong medical evidence supporting the original onset date. Keep in mind that this approach will reduce your fee, which is based on your client's back benefits.

## Closed Periods

A little-known way of reducing ALJ resistance to awarding benefits is the use of the closed period strategy. A "closed period" case has a definite beginning and ending date of impairment period. The individual is applying for benefits on a medical condition that has resolved itself after lasting for at least twelve months. The period of disability is the closed period where benefits may be awarded.

**Example:** Alice suffered a serious eye injury in an industrial accident on 1/1/14. She became unable to perform work because of blurred vision and pain. After the accident, she underwent several eye surgeries. As a result, she fully recovered, regaining her vision as of 2/1/15. She is also free of pain.

Alice was denied based on duration. However, it has taken about thirteen months for her to recover sufficiently to return to work. You get the case and immediately recognize the possibility of a closed period allowance. Alice meets the criteria for being totally disabled for more than twelve months. Therefore, she is entitled to receive benefits from the Established Onset Date (EOD) 1/1/14 - 1/1/15 minus the six-month waiting period. She's looking at seven months of paid benefit and you are her hero!

A closed period case has a well-defined eligibility interval and you should use only medical evidence generated during that period. Develop the case as usual, but limit your argument to the closed period dates. If SSA awards benefits, they will be paid in one lump sum for the period of documented disability.

## Subjective Strategies

In this course, we concentrate on teaching you to use documented facts as the primary ammunition in a claim. However, a little professionally expressed

empathy can go a long way toward helping you win a weaker case. Two subjective criteria that can help at the ALJ Level are:

- The Financial Plea
- The Pathetic Appearance Strategy

**The Financial Plea:** Another subtle but effective strategy for convincing an ALJ to agree to allow disability benefits is the financial plea technique. This approach essentially involves convincing the ALJ (as part of your argument) that your client's financial situation is contributing to a worsening of his/her condition.

This approach should never be used as the main argument for disability, but it can be incorporated into the discussion for effect. Do not use this approach to influence case outcome on the Initial or Reconsideration Levels.

Some of the most impactful financial conditions to mention are:

- Loss of home
- Lack of survival basics – food, shoes, winter coat, etc
- Inability to pay for needed medical attention
- Inability to afford needed medications

The hardship you claim must be verifiable through your client and/or his/her family or friends. Your Formal Argument must still be based on sound medical and vocational factors, with greatest emphasis on alleged impairments.

**The Pathetic Appearance Strategy:** The odds of winning at the ALJ Level are greater than at any other time in the disability process. Several of our students have asked us, “When should I go to a hearing with a client?” Our experience has shown that it’s generally a good thing to attend all requested face-to-face hearings, especially if you have strong medical evidence and a client who appears pathetically impaired – that is, he/she looks disabled and physically compromised.

This strategy works great in cases where there are severe disfigurements and in cases where the claimant uses a walker or otherwise appears very fragile. The pathetically impaired appearance strategy also works with less obvious disorders like arthritis. The ALJ may take such visual evidence into account when making the decision, although he/she will never cite appearance as a reason for allowance. This is an unusual but effective method of fine-tuning

your argument by non-verbally tugging the ALJ's heartstrings. Only works if ALJ has a heart! :)

### Just a Little Emotion, Please!

Now that we've addressed effective subjective strategies, we must add a caveat. Showing passion for your client and your work are fantastic, but don't overdo it! We generally confine our emotional outbursts to an occasional snipe at a vocational specialist during a hearing.

### The Formal Argument: Summary

The Formal Argument is the backbone of case representation and each one should be carefully constructed. The single most important objective of the argument is to make your client appear as disabled as possible without altering the facts. If your Formal Argument makes sense, regardless of your writing style, you have a good shot at winning an allowance. Citing additional impairments and limitations is effective at the appeal levels because it forces the FRO or ALJ to revisit the case, taking into consideration additional impairments, evidence or limitations.

Your argument should be detailed but not long. Keep it to seven pages or less. Our Formal Arguments are typically less than four pages.

Note: Disability Associates offers a unique Argument Creation tool in our Olivia case management software. This unique tool will help you to create better arguments while saving you hours of processing time.

Always provide a summary at the end of the argument and make sure your conclusions are in the client's favor. Never appear apologetic for your position. Always be firm in your conclusions, but use a humble tone and an open-minded attitude.

Remember that the ALJ has the power to consider all possible aspects of your case. He/she can consider findings that have been ignored or overlooked by SSA at previous adjudicative levels. Your client is usually the best source for such new information. If you have evidence that was not properly considered before, make sure to present it in your argument and/or during the hearing. We'll discuss other argument strategies and how to handle face-to-

face hearings in the Business Guide.

### When Should I Submit the Formal Case Argument?

Like the argument itself, when you submit an argument can be part of the strategy. There is no specific rule governing when to submit an argument to SSA. Of course, it is common sense that submitting an argument before you have the facts or after the case is decided would not do the claimant much good!

On the Initial Level, submit the Formal Argument when you have enough evidence to formulate a reasonable case. If you are involved at this level, you get to develop the case from the outset. You know all the case issues and you've got a strategy at your fingertips.

Prepare and submit your Formal Argument on any appeal level. If you have written an argument on a previous adjudicative level, you can and should use it again, adding new evidence and/or overlooked allegations. Submit your argument to SSA as soon as possible during these appeals, because they move faster than Initial Level cases. Also, the ALJ Level has document submission deadlines.

We have found that Formal Arguments are generally most effective at the first appeal and ALJ Levels. We have found that symptomatic limitations like pain can be effectively added on all adjudicative levels. Supporting evidence for any new alleged impairment is critical to success.

The Formal Argument is the backbone of case representation on all adjudicative levels and must be carefully constructed. All things being equal, if you develop a strong Formal Argument you'll have a good shot at winning the case for your client regardless of your writing style.

**Note:** Because of the ALJ's power, he/she is able to consider all factors that are important to a case. He/she can take into account things that would not come into play at the previous adjudicative levels, such as the physical appearance of the claimant. So, by all means point out all relevant findings in your Formal Argument, especially at the ALJ Level. In most states, the claimant's best chance of winning is still at the ALJ Appeal Level.

At the end of your Formal Argument, summarize the case and end with a statement of your conclusion. Make sure your position is clearly stated and in

the claimant's favor. Never appear apologetic or uncertain about your position. Always conduct yourself in a polite and professional manner.

Remember, include the basic components of a Formal Argument in all cases that you represent, but do not become too rigid in your approach. Allow room for creativity while always remembering that the facts **MUST** support your position. When in doubt, refer to the sample Formal Argument provided in your Olivia Case management software. See video below:

### Care about Your Work!

Last thing! Care about the outcome of every case you represent! Positive energy attracts people because where there is energy and enthusiasm there is opportunity. If you take your Advocate responsibilities seriously, you'll win far more cases and build a great reputation. If a claimant sees that you're passionate about your work, he/she will not only sign on to become your client, he/she will also become one of your best marketing allies - regardless of his/her case's outcome. Remember – positive word of mouth is critical to any professional's success!