

How to Write a Formal Argument



This practical memorandum writing course is designed to provide guidance to disability advocates in the production of formal arguments on behalf of those applying for Social Security disability benefits.

It is your responsibility of a disability advocate to review all relevant medical and vocational documentation in a disability claim. You would use the client's documentation to produce an argument supporting his or her claim of total disability. This evaluation process is divided into three steps. These are:

- 1) Extraction of key factors (findings) from the evidence of record.
- 2) Listing the key findings to formulate a strategy.
- 3) Write an argument based on your strategy.

Let's take a closer look at the steps that enable you to create an argument. In step one of the case evaluation process, you've learned how to review the medical evidence and make note of any and all findings (key factors) that support the claimant's alleged diagnosis, symptoms and limitations.

In reviewing the evidence, you list the key findings so that you can keep them straight while writing your formal argument. Listing and/or summarizing evidence in the order below will help you to create better arguments:

- a) Note the primary and secondary diagnosis, onset and treatment dates.
- b) Make note of the claimant's SSN, case level, and job titles.
- c) List the claimant's alleged symptoms and limitations.
- d) Check for a loose nexus between the impairment and the symptoms.
- e) Look for medical findings that support the alleged symptoms.
- f) Look for a nexus between the symptom and the alleged limitations.
- g) List all the medical sources in chronological order.
- h) Create your argument using a narrative format.
- i) When sighting supportive evidence provide the doctor's name
- j) Stay focused on the vocational factor that will result in an allowance.
- k) Compare limitations to the duties of the claimant's past work.

- l) Explain why he can no longer perform his past work.
- m) Compare limitations to the duties of other less demanding work,
- n) Explain why he can no longer perform even less demanding work.
- o) Summarize your argument by making a direct and unapologetic statement as to the disabled status of your client.
- p) End your argument by asking that an allowance determination be made sighting the onset when possible.

Things to Note When Creating an Argument

Proving the alleged diagnosis

Does the claimant really suffer from the disease he is alleging? Just because a claimant says that he is disabled doesn't mean that the condition meets SSA's criteria for total disability. Therefore, the first step in evaluating the medical evidence should be a verification of the primary diagnosis. Reviewing medical evidence is really no different from evaluating any detailed document. You just have to know what to look for. To prove the existence of impairment, you look for office notes, doctor's comments, laboratory tests and other hard evidence that will verify and support the existence of the alleged impairment. List all evidence that supports the diagnosis for use in your formal argument. If there is no medical documentation supporting the existence of the alleged impairment, you have no case!

The severity of the impairment

Once you have established the existence of an alleged impairment, you are ready to determine the severity of the impairment. Determining severity requires that you evaluate the evidence both subjectively and objectively.

Start with a list of the subjective limitations alleged by the client like the inability to stand and walk. Next, turn to the medical evidence and seek out objective evidence (signs) that support the severity of the disease state. You can extract evidence that supports severity by looking for word clues like mild, moderate and severe. If a finding such as an x-ray report is described as mild, SSA will consider the impairment identified by the x-ray as mild.

A moderate to severe description of a sign or symptom can be used to objectively support the seriousness of the disorder. Once severity is established, it's easier to convincingly argue for severe physical or mental limitations. It should make sense that if the evidence consistently states that

the claimant's condition is mild or non-restrictive, you will have a much harder time proving that a severely limiting disorder exists.

Identifying Physical and/or Mental Limitations

You've established the existence of the primary diagnosis and you've extracted evidence that shows the impairment to be severe. Now you must determine the extent of the claimant's limitations caused by his impairment. You already have a list of limitations alleged by the claimant. You also have a diagnosis with a loose nexus to the impairment. Loose nexus simply implies that there is a rational relationship between the impairment and the limitations it causes.

Review the medical evidence seeking objective evidence that support the alleged physical and or mental limitations caused by the impairment. For example, Dr. Smith's report states that the claimant is not capable of standing and walking for more than fifteen minutes without causing pain or aggravating the condition.

You can also use the claimant's activities of daily living (ADLs) from the claimant, family member and/or a medical source to show a consistency of limitation. The more sources supporting a claimant's limitations, (both medical and non-medical) the more likely the limitations will be accepted by Social Security.

Duration of the impairment

Don't forget the concept of duration when evaluating evidence. Remember, the impairment must last or be expected to last at least twelve continuous months. If it does not last twelve months, the impairment does not meet SSA's definition of a total disability. If the claimant's impairment has lasted or is expected to last at least one year, you have a fighting chance of winning the case. Therefore, no matter how severe the impairment may seem, make sure it meets the duration requirement. See Sequential Analysis process.

Explain how limitation affects work

Using our common sense approach to vocational analysis, it's easy to see the causal relationship between the impairment, symptoms, limitations and ability to perform an action. If the action is required in the performance of a job, the

claimant is limited in his ability to perform the job. Identify enough limitations and you can theoretically argue the inability to perform most any type of work. The key to this approach is the ability to logically match a symptom to a limitation; and the limitation to an action required to perform a job.

Look for and highlight physical and/or mental limitations that are most likely to interfere with the claimant's ability to perform work. Since most SSA claims are won on the bases of medical vocational issues, it makes good sense to focus on how impairment prevents work. For example, if the claimant has diabetes that has resulted in significant problems with lower limb circulation, this disorder could result in severe physical symptoms. These symptoms might include pain and weakness of the lower limbs. These physical symptoms could result in physical limitations such as an inability to ambulate.

The symptom, the inability to ambulate, will demonstrate a level of severity (mild, moderate or severe). The level of severity gives credibility to the argument for the limitation. The limitation is then compared to the duties of the claimant's past work in order to rule it out.

The limitation is then compared to the duties of other less demanding work. If the limitation rules out less demanding work, you're on your way to winning the case. Of course, the more symptoms the claimant has the more limitations you can identify. The more limitations you identify the more work requirements you can exclude. The more requirements you exclude the more likely your client will not be capable of adapting to any type of work.

The Physical Structure of an Argument

Argument Introduction

Every argument should begin by identifying the purpose of the communication, date created, client's name and Social Security number. The argument introduction should also mention the primary and secondary diagnosis, client's age, education, title of primary past work, date worked stopped, AOD, case type and level. You may also quote the claimant's allegations in this segment.

Example: Claimant alleges a total disability as a result of diabetes with severe peripheral neuropathy. He also alleges an inability to walk more than a few feet before experiencing lower extremity weakness. If there are special case issues like a DLI in the past, this issue can be pointed out in this early argument segment to be discussed in greater detail later in the case.

List Sources

List all medical sources being used to argue for the disability. Do not mention sources that are not directly associated with the primary and/or secondary diagnoses.

Impairment discussion

Each impairment should be discussed separately. During the discussion be sure to mention the history surrounding the impairment. For example, how and when the impairment occurred; how has the impairment limited the claimant physically or mentally or both. Mention all of the supportive medical sources who have treated the impairment and if available provide their professional opinions about the claimant's limitations.

Vocational discussion

As you know, most cases are won or lost as a result of a vocational issue. Therefore, you must pay special attention to the data provided in this segment. In the impairment discussion area of your argument, you've identified the primary impairment, its symptoms and limitations. You've also pointed out the supportive medical documentation that supports the alleged limitations. Now it's time to take those limitations and apply them to the duties of past and other less demanding work.

Note: You can rule out a claimant's past work with in a single sentence or in a paragraph. The point here is that you must rule out past work before moving on to other work. Ruling out past work is easy if the demands of the past work are obviously no longer within the client's capability. However, it's not always that obvious. Sometimes you'll use as much as a paragraph to explain why the client is no longer capable of performing past work. A longer discussion of past work is usually not required. Why, because the real issue is - can the claimant do sedentary work?

To win, you must argue for a less than sedentary RFC. Ruling out sedentary work automatically rules out the claimant's past work. Now you must rule out all other sedentary yet less demanding jobs. This is done by comparing the claimant's proven limitations to the demands of sedentary work. If the claimant is found not to be capable of performing sedentary work, he is given an RFC of

less than sedentary. This RFC would result in an allowance. Therefore, the key to winning the case is ruling out the claimant's ability to adapt to sedentary work.

Summation

The argument summation segment is your opportunity to point out the strongest aspects of your argument for a total disability. It's a good idea to keep your summation short. No longer than three paragraphs. Generally, it's a good idea to remind the reader of the pertinent facts that will lead to an allowance decision. These facts include the claimant's age, education, impairments and a list of the medically supported limitations.