

# CPP2

## Lesson 8 – Hearings and Appeals



### Appeal Request Timeframe

To appeal an SSA denial decision, you or your claimant must make a request for appeal in writing within 60 days from the date the claimant receives his decision notice.

### SSA Forms

SSA forms are used by Social Security for the collection of client information. Forms are also used to communicate with claimants or to provide basic instructions. Here is a short list of forms used in the SSA appeal process:

- Form SSA-3441, [Disability Report - Appeal](#)
- Form SSA-827, [Authorization to Disclose Information](#)
- Form SSA-561, [Request for Reconsideration](#)
- Form HA-501, [Request for Hearing by Administrative Law Judge](#).

### SSA Notices

Notices are primarily used to communicate with claimants. The SSA must send a written notice to a claimant on any determination or decision in the case. SSA must also send a notice if there is going to be any adverse actions in a case. The most widely used notice is the PDN or Personalized Denial Notice that explains the reason a case was denied. Most notice forms have some type of identifier that begins with the letter L as in SSA-L1675-U2.

### Notice of Reconsideration

In addition to regular notices, the SSA sometimes sends out advance predetermination notices to SSDI claimants.

These advance notices:

- inform you of action the SSA plans to take—such as a termination of benefits because you are performing Substantial Gainful Activity.
- summarize the evidence in your file that supports the proposed determination
- advise you how to present evidence that may change the planned action, and
- tell you how long you have to respond to the notice.

## Rationales

A Rationale is a formal explanation of an SSA decision with greater detail than the PDN. There are two types of rationales:

### Personalized

### Technical

The personalized rationale is sent to the claimant in the form of a notice. The personalized notice (SSA Form 4268) explains the reason or rationale behind the final decision. If the decision were a denial, then the rationale would be referred to as a Personalized Denial Notice.

A SSA Technical Rationale is an internal document used to explain case details with professional SSA staff. The Technical Rationale is far more detailed than the PDN. The Technical Rationale provides SSA with a case review strategy that can be reengaged if the decision is appealed.

The purposes of the disability determination/hearing decision rationales are to:

- identify the medical and non-medical factors that have been considered
- explain the process the SSA used to arrive at the determination
- provide a permanent record for the underlying conclusion

A Rationale is used by a representative to understand what went wrong and provide the basis for an appeal strategy.

## Appeal Timeline

Enclosed with the notice from the SSA denying or terminating a claimant's benefits, will be information on how to appeal the decision. The claimant or his representative must appeal in writing within 60 days of the date that the claimant received the notice.

## Missed Appeal Deadline

If a deadline for an appeal is missed, you can:

- a) Start over from the initial level
- b) Ask for an extension or waiver of 60 day for good cause.

Generally, SSA will accept a good cause argument and allow you to pursue the appeal.

## Forms used to request an Initial Appeal

Forms SSA-561-U2, SSA-3441-BK, and SSA-827. This starts your first level of appeal.

Depending upon your state, the actual reconsideration appeal process can range from the traditional recon review to a hearing structure as outlined under the DSIP.

## Forms used to request a Reconsideration Appeal

To appeal a denial of a reconsideration claim, you must file Forms HA-501-U5, SSA-3441-BK, and SSA-827. This starts your appeal to an Administrative Law Judge (ALJ).

## Form used to request an ALJ Appeal

To appeal a denial of an ALJ claim, you must file Forms HA-520-U5. This will start the Appeal Council review.

### Form Signature

It is very important that all SSA forms be properly signed. The claimant, legal guardian of a child claimant or the legal representative must sign and date the SSA form in the appropriate form block indicated. It is also important to collect date and signatures of witnesses. If the claimant is not signing his own form, specify the relationship of the person who is signing—such as parent or legal representative.

### Electronic Record Exchange

Claimants and/or their representative can complete an application and other operations online. When client data is exchanged, that information goes into a highly secure and confidential electronic folder (EF) assigned to your name and SSN.

When applying and interviewing at an SSA Field Office, the official will scan client information into his/her EF, even if the claimant completes a paper form. Also, medical evidence in the form of paperwork is scanned into the claimant's electronic folder either by the FO or the DDS.

Physical records submitted to SSA are still retained, but the SSA no longer keeps its own decisional documents in the paper file. The authorized representative does have direct access to the client's EF and can copy files as need.

### Representative Record Review

During an appeal, the representative should acquire access to:

Claimant's PDN, Technical Rationale, medical evidence, vocational data, RFC and/or PRTF Form SSA-2506-BK Psychiatric Review Technique Form (PRTF) if claimant has a mental condition.

Prior to a Hearing, it is wise for the representative to review:

- Claimant's medical documents
- Claimant's work history
- Claimant's RFC
- SSA Correspondence
- Decision Notice

### Disability Hearing Officer (DHO)

Disability Hearing Officers are not medical doctors or psychologists, and do not need to have any formal medical training. Some DHO's are experienced disability examiners or examiner supervisors promoted into a DHO position and given administrative training on how to conduct hearings.

When the DHO receives an appeal, the DHO may allow a claim for continued benefits without requiring a hearing. If so, the claimant will receive a notice to that effect.

Otherwise, the DHO will send the claimant and his representative a notice of hearing date and location.

Before the hearing, the DHO will send a notice asking for a list of the people the claimant expects to attend the hearing including witnesses or a representative.

To request an ALJ hearing, you need three forms:

- Form HA-501-U5: Request for Hearing by Administrative Law Judge
- Form SSA-3441-BK: Disability Report—Appeal, and
- Form SSA-827: Authorization for Source to Release Information to the Social Security Administration (see Section D1a).

### Prehearing Conference

An Administrative Law Judge (ALJ) has the authority to hold a prehearing conference to facilitate the a decision on a claim. The representative may also request such a conference, although the ALJ is not bound to honor your request.

A prehearing conference is normally held by telephone, unless the ALJ decides that a different format (such as an in-person hearing) is desirable. The representative will be given reasonable notice of the time, place, and manner of the conference. This option is also available if the claim is processed under the DSIP.

### Hearing Witnesses

Not all hearings involve a witness. However, a hearing can and does commonly include witnesses for both the claimant and the SSA. Anyone with some specific knowledge of the limitations imposed by your impairments can act as the claimant's witness. A few credible witnesses should be sufficient to make the point to the judge that the claimant is totally disabled.

The ALJ will usually question the witness first. The representative may also question the witnesses. It is the duty of the representative to make sure that the issues supporting the claimant's impairment have been made clear to the ALJ. The most common witness for the state is the vocational expert. It is the job of the vocational expert to provide SSA with a list of at least three jobs that the claimant can still perform despite his impairment.

The representative must be prepared to counter the vocational specialist. This is done by driving home all of the physical and or mental limitations suffered by the claimant. The totality of the claimant's limitations is then used to rule out even those jobs suggested by the vocational specialist. We teach several techniques for countering vocational arguments in our Ultimate Advocate Training program.

### ALJ Decision

It is possible that the ALJ will provide a decision by the end of the hearing. However, this is not required so don't expect it. The SSA will send the claimant and the representative a copy of the ALJ's decision, which usually takes about two more months. If the ALJ denies the claim, the representative can appeal further to the Appeals Council.

## Post-hearing Conferences

It is possible that an ALJ will request additional evidence at a hearing. If this occurs, the hearing will be postponed until the additional evidence has been gathered. Another hearing will be scheduled for the final decision. The rules associated with a post-hearing conference are the same that are used in the normal hearing process.

## The Appeals Council

The Appeals Council is the appeal step following an ALJ denial. The SSA must receive your request Form 520 within 60 days of when the claimant receives his denial notice. The council will review the representative's request and determine if it will deny, accept or dismiss the request.

If the AC dismisses your case without review, it will send you a notice advising that it finds no basis to disturb the ALJ's decision. The ALJ's decision then becomes the final decision. This is usually the result of an AC review. If the AC does review your case, remember that you aren't likely to win, and you'll be lucky to hear from the AC within a year. It is possible to file another initial disability claim while your file languishes at the AC, but the SSA can delay your new claim until the AC makes its decision.

## Reopening of Decisions

An alternative to appealing a case to the AC is requesting a reopening — a second look by whichever administrative level of the SSA has the claim. If your state has not yet changed to the Disability Service Improvement Process, you can ask for a reopening in the following situations:

- If you make your request within 12 months of the date of the notice of the initial determination by the DDS, ALJ, or AC, you can ask for a reopening for any reason.
- If you believe that the determination to deny you or terminate your benefits was based on fraud or similar fault, you can request a reopening at any time.
- If you make your request within four years for SSDI applicants or two years for SSI applicants of the date of the notice of the initial determination, the SSA may reopen the case if it finds good cause. Good cause is defined as follows:
  1. New, important (called "material") evidence
  2. A clerical error in the computation of your benefits, or
  3. Evidence of a clear error.

## Res judicata

Res judicata is a legal barrier to filing a subsequent claim. It essentially means that the case has already been adjudicated. The DDS can use res judicata to avoid deciding on a claim that has been previously determined if all facts, issues, conditions, and evidence are the same. If there has been a worsening of a condition with additional medical evidence, this will override Res Judicata allowing the case to proceed.

## Benefit Amount

A representative must be aware of at least the basics of benefit calculations. Questions associated with benefit calculation have appeared on previous certification examinations.

## Average Indexed Monthly Earnings (AIME)

The claimant's AIME is calculated as the average earnings over a period of many years. The claimant's AIME is then used to calculate the primary insurance amount (PIA).

PIA is the fixed percentages of predetermined dollar amounts of the AIME. Dollar amount increases yearly, but the percentages stays the same.

## The Maximum Family Benefit (MFB)

The MFB is the total monthly benefit that can be paid to (the wage earner) and any family members entitled to benefits. The MFB does not affect the amount of a claimant's benefit. Instead, added to your PIA are different amounts for each family member based on a percentage of your PIA. For example, a child eligible to receive benefits may get 50% entitled amount if parent is living and 75% if deceased.

## Direct Deposit

While direct deposit is not usually an issue in a client's case, as a representative you should at least be aware that it exist. The SSA prefers that claimant's use this method and can be used at most banking types i.e. banks, credit unions, etc.

## Overpayments (Erroneous Payments)

If a claimant's receives a deposit payment to which he is not entitled, warn the claimant to immediately contact SSA. Over payments will usually require repayment by the claimant.