

MODULE 8D Advocate Advanced Topics

OPERATIONS

L1 Creating Supportive Evidence

It's illegal for a non-medical source to create and submit medical evidence in a Social Security disability claim. However, there are techniques that can be used by disability advocates that would allow the advocate to produce acceptable documentation in a disability claim.

Creation of evidence by an advocate in a disability claim is usually done in the form of a questionnaire. The questionnaire is usually used to identify, qualify, quantify or emphasize a claimant's physical or mental limitations. A disability advocate may not generate a medical report, but she can generate a document in support of a claimant's alleged physical or mental limitations.

Questionnaires are used by Social Security to identify limitations. Here are the rules for creating your own questionnaires and how to appropriately use them in a disability claim.

When to produce

An advocate should only create her own questionnaire when the medical and/or other evidence does not clearly reflect the claimant's true level of physical and/or mental limitation. As a disability advocate, you have the same right as SSA to formulate and express an opinion on the claimant's perceived level of capability. Your opinion can be strengthened by using a custom questionnaire. The findings within the questionnaire, if supportive of your position, can then be cited in your argument for a reduced RFC.

If you feel that the claimant is more limited than SSA believes, this is a perfect reason to create a custom questionnaire designed to support your opinion.

Sample Case:

Our sample claimant is 45 years of age with 12 years of education, and is suffering from a severe back disorder with chronic pain. The medical evidence supports her diagnosis, but SSA feels that she is still capable of performing sedentary work.

You know that if a person is under age 49, you will need to reduce the RFC to less than sedentary in order to win the case. However, in our sample case, there is no additional evidence that you can use to argue for a further reduction in RFC. This is the time to consider creating a custom questionnaire.

Custom Questionnaire

A custom questionnaire is nothing more than a short list of questions that focuses on a particular limitation or group of limitations you are trying to establish. A questionnaire is used to identify, qualify, quantify or emphasize a claimant's alleged limitations.

SSA will allow an advocate to produce and use a custom questionnaire if:

1. The claimant has an impairment that is both severe and medically determinable.
2. The advocate uses the proper technique to create the questionnaire.
3. The questionnaire is signed by an acceptable medical source.

A medically determinable impairment is established by the claimant's medical evidence of record. A diagnosis cannot be made by an advocate. In our example case, we have a lady with a severe back disorder that has been properly documented in her medical evidence. However, given her young age, the case was denied to other work by SSA, based on the claimant's remaining ability to perform sedentary work.

You want to argue for a less than sedentary RFC, but you don't have new or additional evidence that would support your opinion for a lowered RFC. You decide to create a custom questionnaire and send it to the claimant's primary physician.

Using the proper technique

You must use the proper technique when creating questions within a custom questionnaire. The questions should be leading and presented in such a way that they can be answered with a simple yes or no. This approach makes it easier for the doctor to respond to your questionnaire. If it is easy for the doctor to complete the questionnaire, this increases the likelihood that he will use the form and return it to you.

Here are a few sample questions that you might ask in this case:

1. Given the claimant's diagnosis of severe degenerative disc disease, would it be reasonable to limit this claimant to lifting less than 10 pounds maximum?
2. The claimant alleges increased back pain when standing. Given her diagnosis of severe degenerative disc disease, would it be reasonable to limit this claimant to standing less than 2 hours of an 8-hour day?
3. Would it be reasonable to limit this claimant to sitting no more than 15-20 minutes without frequent changes of posture or position?
4. If the claimant must sit for more than 20 minutes, could this result in the increased symptom of back pain and stiffness?
5. If the claimant must stand for more than 20 minutes, could this result in the increased symptom of back pain?
6. Do you feel that it is reasonable to restrict this claimant from performing occasional bending, stooping, crouching and crawling due to back pain?
7. Do you feel that this claimant might benefit from the use of an ambulatory device?

As you can see, our sample questions are designed to reinforce the advocate's argument that the claimant is more limited than previously demonstrated. The key to getting SSA to accept the custom questionnaire is the doctor's signature. If the questionnaire is signed by a doctor, it becomes an official part of the claimant's medical documentation. This means that if the questionnaire is presented to SSA, they must take it seriously.

Once you receive the signed and completed questionnaire, you can use it as evidence-of-record to support your argument for a reduced RFC. All of your questions should be aimed at acquiring answers that support your position. It is all in the way you structure your questions.

Don't ask questions in the positive.

Note the sample questions above. Each of them is asking the physician to verify a described limitation, not a capability. You would not ask the question like this: Do you feel that the claimant can walk three miles a day? The doctor might say yes, completely destroying your argument. Better to say: Claimant alleges an inability to sit for more than 15 minutes as a result of her condition. She states that sitting any longer than fifteen minutes without changing posture or position exacerbate her back pain. Doctor, would it be reasonable to limit this person to no more than fifteen minutes of sitting?

Using a custom questionnaire

A custom question can be used in several different circumstances. For example, if you know that the client's attending physician (AP) believes that his patient is disabled, this AP would be a good source for using the custom questionnaire. The AP is in the claimant's corner and would not hesitate to provide affirmative responses to limitations sighted in the questionnaire.

If the attending physician is not supportive of the claimant's alleged disability, then you can send the client to another medical source. The new medical source can be instructed to perform a physical examination as he reviews your areas of concern. This approach could produce two powerful new pieces of evidence. One in the form of an updated physical exam and the other in the form of a questionnaire supporting the claimant's alleged limitations.

Using a new medical source is also appropriate if you want to add a new or ignored impairment to the mix. If the new impairment causes limitations, the new physical examination can be used to establish a diagnosis and level of severity. The custom questionnaire for the new or ignored impairment is then used to establish limitations not previously considered.