MODULE 8D Advocate Advanced Topics
OPERATIONS
L3 Protecting Your Fee

Occasionally you might have trouble getting paid after winning a disability case. Based on our past experience as employees of the SSA Fraud Division, we have created some techniques to help you collect your fee in difficult situations.

SSA requires that you provide the claimant with a copy of your Fee Contract and your Fee Petition with attachment. These documents establish your right to a fee and remind your client of his/her obligation to pay for services rendered. Still, it is inevitable that you'll run into someone who will try to avoid paying you. Here is how Disability Associates recommends handling fee issues.

Step One: Pre-Warn

A client is much less likely to avoid payment if he/she has been warned of the consequences in advance. Include a paragraph in your Fee Contract that spells them out. Your greatest leverage is the potential loss of benefits if your client refuses to pay you.

Warning: Never directly threaten a client with loss of benefits! When you first go over the agreement with a potential client, point out that this is in fact a three-way contract between the client, you and SSA. Be sure to review the delinquent payment clause, gently pointing out that failure to pay fees is considered fraud and can result in cessation of benefits pending investigation. This puts him/her on notice that this is a real obligation.

Step Two: Insert Protective Clauses

Include protective clauses in your Fee Contract describing your company policy on billing and the consequences of withdrawal and delinquent fees. Here are four sample protective clauses, provided for training purposes only. Consult your attorney for the actual language and structure of your own Fee Contract.

Sample Delinquent Fee Clause:

If payment of fees for services rendered upon successful case completion is not received as specified within this Contract, Advocate reserves the right to take such action as may result in the immediate stoppage of Client benefits until conclusion of investigation by the Social Security Administration.

Sample Withdrawal Clause:

Due to the nature of this Contingency Fee Contract, the parties expressly agree to renegotiate in the event of a termination of the Advocate-Client relationship. Although Client may terminate by written notice at any time, Client expressly understands that he/she shall not be relieved of obligations to pay amounts due hereunder by such termination. In the event Advocate withdraws for such reasons as misrepresentation made by Client,

Client's failure to pay costs or expenses within a reasonable time of billing, Client's failure to cooperate with Advocate and/or any action or request by Client which would require Advocate to violate a State Code of Professional Responsibility or any other ethical standard to which Advocates are subject, Client shall be responsible for costs incurred to that point.

Sample Billing Clause:

Advocate agrees to keep track of time actually spent by Advocate on Client's case. Upon collection of any money or property, Advocate shall provide a written accounting showing Advocate's outstanding costs, fees due to Advocate and amounts due Client.

Upon case conclusion, Advocate shall provide Client a full accounting of all amounts previously placed in trust for Client, showing all disbursements and the outstanding balance. Client may, at any time, make written request for information concerning his/her account with Advocate. Advocate shall respond to such requests within 14 days of receipt.

Sample Termination Clause:

Client may terminate this Contract by notifying Advocate in writing. No costs will accrue to Client for time expended by Advocate in the process of withdrawal. However, Client shall pay Advocate for expenses incurred by Advocate on matters other than withdrawal. Such fees and costs shall be due and payable upon termination.

Sample Reimbursement Clause:

Client understands that he/she is responsible and shall be billed for all advocate out-of-pocket expenses associated with the representation of the case. The reimbursement (case development) fee can include but is not limited to phone call charges, travel, hotel, parking, meals, medical records, etc. The reimbursement (case development) fee will be added to the client's final bill for representation and is due upon final decision regardless of case outcome.

Step Three: Action

Give your client several opportunities to pay before taking action against him/her and keep things friendly if at all possible. If a client refuses to pay for services rendered upon successful case completion, write him/her at least three letters within a two-month period reminding him/her of the obligation. Offer a payment schedule if he/she is having problems coming up with the full amount all at once. Make sure this offer is in writing, and if the client accepts it, make sure to get it signed.

If nothing works, your final letter should be stern and direct. If some type of payment is not forthcoming within a designated time frame of about two weeks, warn your client that you'll begin legal action that may result in the loss of his/her disability benefits. If he/she still doesn't act to remedy this situation, write a letter to your local SSA Fraud Division, which is usually located at the DO or regional SSA office.

In the letter, state the client's name and Social Security number. Inform SSA that you acted as his/her authorized representative and provide a copy of the Fee Contract, Fee Petition and attachment. Tell SSA that you feel that the claimant was not completely truthful with you in the application process and that you believe there may be fraud involved. It is not unreasonable to conclude that the claimant may have been acting fraudulently. After all, if he/she isn't willing to pay fees agreed to under contract, who knows if anything else he/she has alleged is truthful?

This will spark an immediate SSA review of the case. They will contact both you and your client for an investigation, and may stop paying benefits until the matter is settled.

Contact your client after taking these actions and explain that your fee must be paid if he/she wants to continue to have your support in the case. We have only used this approach three or four times in the last ten years, but it worked every time!

Alternative Enforcement Approach

Here is another powerful way to collect from a reluctant client. After you have sent letters as explained above, take the case to your state's Small Claims Court along with

signed copies of your Fee Contract, Fee Petition and attachment. You can do this even if your client lives in another state.

Filing in Small Claims Court will cost you between $25 and $150. Add this fee and any other court expenses to the amount claimed. You'll almost always win when the Judge reviews your detailed Fee Petition attachment that documents line-by-line all of the work you did on your client's behalf. If the claimant fails to attend the court hearing, you'll win by default.

Present the favorable judgment along with a copy of your signed Fee Contract, Fee Petition and attachment to SSA for review.   Also submit a letter requesting garnishment of a specified percentage of the claimant's benefits on a monthly basis until the fee is paid in full. SSA is then faced with a garnishment request based not only on your proven work on your client's behalf, but also on a legal decision made by a member of the Court. Result? SSA will begin deducting an amount equal to the specified percentage of monthly benefits until the fee is paid in full.   This approach works about 60% of the time.

Olivia©'s Role in Collecting Your Fee

Collecting your fee in problem situations is made a lot easier with our new Olivia© software, which allows you to create extremely detailed Fee Petition attachments that are difficult to argue against and that make it easier for SSA to rule in your favor. As long as you diligently entered and itemized your actions during Case Processing, you can generate detailed justifications of your fee with one click of a button in Olivia©