

MODULE 8D Advocate Advanced Topics

OPERATIONS

L4 Remote Representation

Remote representation from the standpoint of a disability advocate is defined as the acceptances and representation of a case outside of the advocate's immediate area. Generally, an advocate will begin his service by accepting cases within his own community. As the advocate becomes more comfortable with the process, he or she may begin to accept cases statewide. After becoming comfortable at the state level, the elite disability advocate will then want to accept cases regionally. Ultimately, an experienced advocate could create a nationwide service.

Change is slow but steady:

The Social Security application process has been around for a long time. In Government work, when a process has been around for a while, it can be a difficult adjustment for the old-timers at SSA. Such is the case with the Social Security disability application process. In the old days, all disability applicants applied for benefits in person at their local SSA district office. This time consuming process is still used today. However, in the last decade, SSA has come to rely more and more on the telephone and Internet application process.

SSA employees have reluctantly adapted to the phone application process and are now trying to adjust to online applications. What makes change so difficult for SSA is that these newer application processes are in a constant state of flux. SSA will try an approach for a while and then adjust it in some way to address a previously unseen problem. Although this approach can be annoying, in the long run it actually works. If you can handle change, we believe that these modest adaptations to the application process will ultimately serve SSA, the client and you. Modernizing the application process makes it easier for an applicant to apply for benefits and for you to accept cases outside of your home state.

Pros and Cons:

When a disability advocate accepts a remote case, there are both pros and Cons to consider. I'm not going to waste your time discussing the pros. The pros are obvious and it's usually the cons that cause all the problems. I believe that this report will be far more valuable to you if we focus on the cons of national representation and how to best overcome them.

Making Application:

The application process can be cumbersome even when representing a case within your community. Thus, you can imagine Social Security's potential confusion when you offer

them an “Appointment of Rep” form (1696) addressed outside the state of the applicant. Although SSA works with applicants with out-of-state representation every day, you wouldn’t think so by how some employees respond.

There are basically two convenient methods of applying for disability benefits that work well with remote representation. The first is application by phone. When making application by phone, we recommend that it be done in a three-way call. That is, SSA, the applicant and you should be on the phone simultaneously during the process. This approach will enable you to assist the applicant in providing information and control the kind of information shared with SSA during application interview.

When making application by phone, prepare yourself and the applicant beforehand. Tell the applicant what to expect and warn him about providing information that might hurt his case. A problem usually occurs when the applicant is asked about his daily activities. Don’t let the client provide information that can be used by SSA to deny his claim. Instruct the client to provide information about what he can’t do as opposed to what he can do physically.

Example: “I walk three miles everyday to help the circulation in my legs.” If your client tells SSA this, SSA will assume that he can perform light work. This assumption on the part of SSA could lead to the denial of the case.

If possible, have the client provide you with a copy of any document that strongly suggests that the alleged impairment is real and serious. This doesn’t have to be the client’s entire record. An example of documentation in this circumstance would be a one or two page doctor’s report, hospital summary, X-ray, pathology, etc., that demonstrates the existence and or seriousness of the impairment. We’ll discuss medical evidence in more detail later in this report.

Once on the phone with SSA, you can begin the process for the client. Identify yourself and answer all questions put to you by SSA. Then SSA will ask the client if he agrees with allowing you to proceed with him during the application process. If the client agrees, SSA will then begin asking the client questions related to his case. When appropriate, you can intercede and explain a point or clarify an issue for the client. From this point on, the application process is pretty much the same as any other application.

Note: Although you’ll most likely be able to help the client during the phone interview, keep in mind that you are not the authorized representative until SSA receives your “Appointment of Rep” 1696 form signed by both you and the client.

When applying by phone, use this opportunity to obtain information about the office you’re working with. This is extremely important for growing your service! Direct contact with the DO or DDS office during the application process enables you to establish future office contacts. These contacts also enable you learn the location of the DO and DDS offices, time-lines for processing cases within those offices, availability of case evidence, cooperation level of the office and any specific instructions that might help SSA to expedite the case.

Government woes:

In defense of both State and Federal SSA offices, these are tough budgetary times. Some state and federal offices are in really bad fiscal condition. Many offices are severely understaffed but continue to process growing caseloads. There may even be hiring freezes in some states with lay-offs being a serious possibility.

If you work with one of these under staffed offices, expect much less cooperation. Given the pressure these government employees are under, it would serve you to be both positive and helpful to the SSA employee. Keep in mind what motivates the SSA employee and how his performance is reviewed. Always project a willingness to help the DO or DDS employee to get what they need to make a faster decision. This approach will go a long way in making it easier for you to make positive inroads with many SSA offices nationwide.

Online Application Process:

The second most convenient method of making a remote application is online. Making application online is done by visiting Social Security's home page. On the SSA web site, the applicant can complete an application form and submit it within about fifteen minutes. SSA will then forward the information to the appropriate state office to determine what benefits, if any, the client is eligible for.

Note: The online application process cannot be used for SSI claims. For those claims, SSA asks that you call their Social Security 1-800-772-1213 information line.

SSA's online application form begins by asking the claimant a series of questions. These questions help SSA to sort the case into an appropriate category. For example: SSA asks each client, "Are you at least 62 years and 9 months old?" If the applicant answers yes, the case is forwarded to a retirement application segment. If the answer is no and depending upon the answers to the other questions, the case will be forwarded to the appropriate application form or the client will be told to call SSA for assistance.

Before making an online application:

Making application online is really no different than making application at the District Office. The only real difference is that you and the client can submit an application without sitting around a waiting room for several hours. Once SSA determines that the client is indeed eligible to apply, he or his representative will be asked to complete other forms. SSA will ask that these additional documents be sent directly to the appropriate district office. This request for original documentation occurs because SSA usually wants an original copy of certain documents signed by the claimant and/or representative.

The following is a list of steps that should be taken prior to making online application regardless of application level:

1. Assess the case to determine its viability.
2. Interview the client to learn the facts of his case.
3. Explain the application process to the client.

4. Explain your services to the client.
5. Request copies of evidence from the client for the period of disability.
6. Send info packet with appropriate forms, etc., for signing to the claimant.
7. Inform the client of additional materials that he will need to acquire for the application process. Examples: Original birth certificate, citizenship papers, military service papers and W-2 forms. You do not need to have all of these papers at the time of application. Most can be submitted later.

You may also want to send the client a copy of the application form to complete and return to you. You can use either the online application forms provided by SSA or you can use the application form provided in the "Forms Buddy" software. By getting the applicant to complete the application form ahead of time, you allow yourself the opportunity to review the details of his claim before SSA sees them.

Having the client's case details also allows you to go online without the client and make application for him. You will need to know a great deal about the client including his Social Security number, etc., in order to apply for him. If you use this approach, be sure to keep the client up to date as to what actions you're taking on his behalf. Also make sure that you have signed copies of the 1696 and the application form before making application on behalf of the client.

We also suggest that before you do your first online application, you first familiarize yourself with the online process. The best way to do this is to visit the SSA web site and actually go through the online application process. Print all of the instruction sheets in the online application area and read them carefully. These instructions will teach you how to use the online application process, documentation requirements and keep you up-to-date on changes to the process.

Medical Evidence:

Acquiring medical evidence in any disability claim can be challenging. This is especially true when representing cases remotely. When using remote representation, the acquisition of medical evidence is made easier if you follow these suggestions:

1. Immediately request copies of all available records from the client.
2. If the client doesn't have a copy, encourage him to get copies.
3. Explain the importance of having a personal copy of medical records and instruct him in how to get them. (Claimant should write or visit sources of evidence, provide signed releases, request and copy the evidence by date). Remember to direct the client to only collect evidence that directly addresses his impairment.
4. If the client is within 60 days of the last SSA decision, his records may still be at the DO or DDS. Both you and the claimant should contact the appropriate SSA office and ask if the records are still available. If the records are there, have the client visit the office and make copies. Remember, you're too far away to handle this chore. The claimant can be motivated to get his records by explaining the relationship between records and speed of case completion. Remind the client that the quicker the case is completed, the sooner he claimant will begin enjoying

his benefits.

5. Write the DO or DDS office as usual and request copies of all evidence of record even if the client has already promised to get copies.
6. Offer the client an incentive to get copies of his own records. This incentive can be anything from a special service to a small discount on services.
7. Get the client's family to assist you in getting records. This is especially important if the claimant's primary diagnosis is a mental disorder.

Once you have copies of the client's medical records, you proceed with the case as usual.

Fee Considerations:

The fee process for a remote case is the same as that of any other case. You can use the same fee petition and/or contract that you use with a local case. However, your contract or fee agreement may need to be slightly modified to meet the standards of the state in which the claimant lives.

We believe that it is also important to add a strong protection clause to your contract if one doesn't already exist. The clause chosen should address and make clear the consequences for certain actions or events. In reality, every clause in your contract is a protection clause. Here is an example of a protective clause that demands payment for services rendered under fraudulent circumstances:

"If we discover that the statements and/or allegations made by (you) the claimant are untrue or that the materials provided by (you) the claimant are invalid, the claimant agrees to be held responsible for the following costs incurred as a result of services rendered on the claimant's behalf."

You list the items to be paid by the claimant if the contract is unilaterally dissolved.

Here is another protective clause that can be used to protect the representative's fee:

"
If upon the successful representation of this claim, said client refuses to deliver payment per this fee agreement, failure to pay will be considered an immediate breach of contract. In this circumstance, our firm will report the breach of contract to SSA as a fraudulent claim. This action could result in the immediate suspension of your Social Security disability benefit payments. We also reserve the right to take legal action to recover the agreed upon fee for services rendered and any attorneys

fees associated with the collect of our fee.”

Using these types of clauses tends to motivate most clients into paying what they owe. Make sure that your fee contract is reviewed by a local attorney.