

How Can I Help Them, Lord?

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Social Security Disability Benefits: Why Are There So Many Denials?

We have all heard the comment that no one gets Social Security Disability Benefits the first time around; that people are denied first and need to seek the assistance of a lawyer to get their case approved. How wrong we are! With a little more knowledge as to how the process works, a truly disabled person can get approved the first time.

Most denials are given due to the applicant not understanding how to provide Social Security with all of the information they need to determine their claim of disablement. Denials can also result from doctors who do not document the symptoms and the severity of those symptoms well enough in their patient's medical records. So how can a person ensure their disability claim will not get denied the first time they apply?

The first thing a disabled person needs to know is the Social Security Administration is not trying to find every way possible to deny a person their benefits. In fact, Social Security does not even make the decisions as to whether or not a person is disabled; rather, that is the job of a third party Evaluation Team - their state's Determinations Office.

To get approved for disability benefits with the least amount of hassle and time, an applicant would first need to understand what the definition of disability is and prove how their medical condition meets the requirements of this definition:

“A disabled adult is defined as an individual age 18 or older who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”

Sometimes, this definition can be hard to meet...especially if a person has just had an accident and the doctors are unsure if their patient will be unable to recover satisfactorily in a 12 month timeframe. Many people resort to applying for disability benefits because they have limited knowledge of what the program is actually designed for. The Social Security program is not a program for people who are disabled for the “short term” even though they may be facing great financial difficulties. This program was designed for people who will be disabled for at least 12 months or more.

If a person's medical condition meets the above definition of disablement, then he/she should consider filing an application for Social Security benefits. A good understanding

of the application process is needed to ensure that benefits are approved the first time the applicant applies:

- a. To apply for Social Security Disability Benefits, the applicant should write and personally deliver to the Social Security Office, a letter stating their intent to file as soon as they feel they are unable to work. (The letter can be mailed but there is no guarantee the letter will not get lost.) Ask the employee at Social Security to provide a date-stamped statement of this letter to keep as proof of having stated the intent to file. The date this letter is received by Social Security becomes known as the "Protective Filing Date" and is then considered to be a claimant's application date, even if it is earlier than the date on which Social Security receives the actual completed and signed application. This protective filing date can affect a claimant's entitlement date, which in turn affects eligibility for benefits and back pay. After securing the protective filing date, the applicant will have six months to get the actual application filed if filing for SSDI or 2 months if filing for SSI without losing their protective filing date.
 - ❖ Note: The protective filing date can also be lost if the scheduled appointment with Social Security is missed. Should the applicant miss their scheduled appointment, they should call immediately to reschedule. The Social Security office should mail a "closeout letter" which will firmly establish the filing period.
 - ❖ Note: An application can still be filed without documenting the protective filing status. The applicant would just lose the Social Security benefits they could have received for the 6 or so months prior to the date the application was made had they notified the office of their intent to file.
- b. When it is time to fill out the application, call to get an appointment so that an employee can help fill out the application. Although Social Security encourages filing for benefits online, the only way an applicant can keep their protective filing status is to file the claim in person. The online application often does not offer enough space to type the answers, which makes going in to the Social Security Office a better option as well.
- c. During the appointment, the Social Security employee will ask a series of questions in order to complete the application. Because some of the questions can be very detailed, it is best that the applicant gather the following items to bring with them to the appointment:
 - ✓ Name, address, telephone number of a person other than the applicant Social Security can call if the applicant cannot be reached;
 - ✓ Social Security card and any other Social Security number that may have been used in the past;
 - ✓ Birth Certificate or proof of U.S. Citizenship or lawful alien status if not born in the United States;
 - ✓ Workers' compensation information, including the settlement agreement, date of injury, claim number, and proof of other disability awarded payment amounts.
 - ✓ Last Tax Return, especially if self-employed;

- ✓ Name and social security record of SSI or Social Security benefits received from earlier in your life; (such as receiving payments from a parent's disability payments as a child);
- ✓ U.S. Military discharge papers, if there was military experience before 1968, and dates of service and records of monthly military benefits;
- ✓ Dates worked if applicant or spouse was employed by the Railroad industry;
- ✓ Information on credits earned under another country's Social Security system;
- ✓ Information on pensions or annuities qualified or will be qualified for based on applicant's employment with any U.S. Federal, Local, or State government offices;
- ✓ List of all marriage dates, places marriages took place and divorce dates from all spouses;
- ✓ Social Security numbers and dates of birth of all spouses an applicant has had;
- ✓ Names of any unmarried children under age 18, age 18-19 if still in secondary school or disabled before age 22;
- ✓ Name of child the applicant had that was age 3, living with the applicant during the year when there were no earnings;
- ✓ Name of parent the applicant claimed as a dependent for ½ of their support at the time the applicant became disabled;
- ✓ Knowledge of which years the applicant had earnings for every year since 1978;
- ✓ The names of employers or information about self - employment and the amount of earnings for the current and past year;
- ✓ How much money was received or is expected to be received from employer since the date the applicant became unable to work;
- ✓ Information on whether the applicant has any unsatisfied felony warrants for arrest or unsatisfied Federal or State warrants for arrest for any violations of the conditions for parole or probation;
- ✓ The date the applicant became unable to work because of illness, injury, or condition and if he/she is still unable to work;
- ✓ Award letters, pay stubs, settlement agreements or other proof of any temporary or permanent worker's compensation type benefits received;
- ✓ If the applicant owns the home they live in, the date moved into that home and the current value of the home;
- ✓ List of all income and investments (CD's, IRA's, etc.);
- ✓ Bank routing number and account number so Social Security benefit can be direct deposited;
- ✓ Voter Registration Card;
- ✓ Copy of all Medical Records since the disability began (see more information on this item further in this newsletter),
- ✓ List of medications, what strength, who prescribed it, and how often it is taken;
- ✓ Letter from Doctor that is a specialist in the area of the disabling condition detailing the disability and how it keeps the applicant from working using a Functional Capacity Form:

<http://www.disabilitysecrets.com/rfcdownloadhome.html> (see more information on this item further in this newsletter);

- ✓ Names, addresses, and phone numbers of all doctors/hospitals that have treated the disabling condition;
- ✓ Third Party Written Statements: These statements are not mandatory to apply for disability benefits, but they can assist the Determinations Office in understanding the applicant's claim. The statements can be obtained from friends, family members, or co-workers that describe how they can see the applicant's problems trying to function on a daily basis.
 - ❖ NOTE: One of the best statements an applicant can obtain is one written from the supervisor on how the performance at work declined before the applicant had to cut back on hours or leave the job permanently.
- ✓ Filled out Social Security Form 3368: **I can assist an applicant in filling this Form out...just call me for an appointment!** (if applicant is filing on their own, this form can be obtained from the Social Security website...having this form filled out ahead of the Social Security appointment is highly recommended since the questions that are asked can be very thought provoking and could be answered wrong if not thought about beforehand.)
- ✓ Narrative on the person's life: The applicant should ask that this narrative be attached to their application, along with the medical records and forwarded on to the Determinations Office for review. The narrative needs to include the following information:
 - a. Education (schools attended, year completed, degrees obtained),
 - b. Previous work history (include specific duties performed, years worked there),
 - c. Description of how the current medical condition affects the applicant from being able to continue working at their job,
 - d. Description of normal daily living activities the applicant can no longer do like he/she used to (eat, bathe, dress, do housework, etc).

This narrative accomplishes two things:

1. It allows the applicant to answer all of the questions the Social Security interviewer will ask him/her with greater accuracy. (Accuracy of all information is crucial to obtaining a favorable decision in the least amount of time.)
2. It allows the Determinations Office to obtain a good mental picture of what the applicant is going through, which can be helpful due to the fact that they do not get to speak with the applicant face to face.

- ❖ NOTE: When answering the questions the Social Security employee asks, the applicant should be VERY SPECIFIC with their answers. They should not give brief descriptions of the disabling condition. The applicant should describe his/her condition in as much detail as he/she can. Remember, medical conditions affect each person in different ways...general answers can be looked at in different ways too...BE SPECIFIC.
- ❖ NOTE: It is when the Social Security employee begins to question the tasks the applicant is able to do on a daily basis then the letter from the doctor should be shown. What should this letter include?
 - ✓ The statement from the doctor must be detailed and say more than "my patient is 100% disabled and unable to work." In fact, Social Security will not look at such a simple statement from the doctor. In other words, if a doctor states that an individual cannot return to work or cannot reasonably be expected to find "other work", then the doctor must state **why a claimant is unable to work by including in his letter:**
 - **clinical findings (results of physical or mental examinations, x-rays, and/or laboratory tests),**
 - **a description of his diagnosis,**
 - **a description of the prescribed treatment,**
 - **His/Her opinion as to the recovery of the condition,**
 - **Be detailed regarding a patient's symptomology and stating the frequency, severity and the duration of the symptoms the patient reports as being disabling so far as being able to: sit, stand, bend, walk, balance, crouch, stoop, perform dexterous hand movements, reach overhead, lift a certain amount of weight, perform tasks that are classified as simple, routine, and repetitive.**
 - **It should also describe patient's general strength levels (typically measured on a 5 point scale): grip strength in either hand, range of motion in all major joints, and reflexes.**
 - **If the disability is a mental impairment only, then the letter must describe the patient's ability to understand, carry out and remember instructions, respond appropriately to supervision, coworkers and work pressures.**
 - **Although there may be multiple symptoms, how does each symptom (combined or viewed separately) prevent the person from holding a job at any given time of the day?**

A good form to provide to the doctor to help cover the above questions on function capacity can be found on the following website:

<http://www.disabilitysecrets.com/rfcdownloadhome.html>)

- ❖ NOTE: The answers the doctor gives to the above items is how the Social Security Office determines if the applicant is still able to do the job he/she used to do or if there is another type of job that has the same type of skills the applicant can do, but at a lesser type of exertion level. All information included in the letter will then be checked against the medical records to determine the accuracy of the condition.
- d. After the application is completed, the Social Security employee sends it to the State Determinations Office for review.
- e. The first thing the Determinations Office does is mail letters to the doctor's offices listed on the application, asking them to supply them with the applicant's medical records. The doctors have an approximate 30 day time frame in which they are to respond and send these records to the Determinations Office. If records have not been received in 15 days, the Determinations Office will send the doctors a second request for records. (Please note that your doctor may not know that your records can be electronically sent to Social Security by downloading Social Security's Records Express software free of charge. Tell your doctor to go to <http://www.ssa.gov/ere/index.html> to download the software needed. Electronically filing your medical records will not only be faster for them, but it will also save them time and money.)
- ❖ NOTE: Earlier, I stated that copies of the medical records should be gathered ahead of time and brought with the applicant to the interview. The reason for this is although the Social Security office tells applicants not to worry...that they will request the medical records needed to make their decision, things can go wrong in the process of obtaining them. Although the Determinations Office does make every effort to obtain doctor's records, **THEY DON'T ALWAYS SUCCEED IN GETTING THEM.** The medical offices may be so bogged down with work that they don't take the time to make the requested copies. Some medical offices also claim that they have never received the letter(s) of request. By having gathered and submitted the medical records themselves, the applicant is better assured of the following:
 1. They can be sure that the state Determinations Office has all of the records necessary for them to make an informed decision on their behalf and;
 2. The disabled person can read what is written in their medical files before submitting them to Social Security to determine if the doctor's notes are correct, if anything needs to be added and also to check if there is sufficient documentation to support their claim;
 3. The workers at the Determinations Office get graded as to how fast they process the applications that appear on their desk. For this reason, applications that have all of the medical records attached to the application are looked at

immediately so that a decision can be made and the case closed as quickly as possible.

- ❖ NOTE: It is very important for the applicant to read these medical files before going in to apply for benefits. I have heard of instances where the doctor wrote down the symptoms on a patient's chart along with his diagnosis/medications prescribed only to have the transcriptionist make mistakes in typing his notes. The mistakes were enough to make the medical record reflect a different disease altogether, which caused the applicant's case to get denied. If any part of the medical record is not correct, **THE APPLICANT MUST NOT MAKE THE CHANGES THEMSELVES BY WRITING ON THE RECORDS THEY HAVE OBTAINED.** Instead, they must go back to their doctor's office and speak to him/her about the problem, ask that he/she correct the record, and provide another copy for the applicant to submit.
- ❖ NOTE: Continue to get copies of all doctor appointments/tests run and continue to submit them to the Determinations Office until they have made a decision on your claim. This is very important to do since the more information the Determinations Office has on the applicant's disability, the easier the decision will be to make as to whether or not the medical records meet Social Security's definition of disablement.
- ❖ NOTE: The Social Security employee may tell the applicant they will not accept the records that have been copied to give to them. The applicant must at that point insist that their records be included as part of their application packet. There are a number of reasons as to why the Social Security Office prefers to obtain the records themselves, but the employee should honor an applicants request to have their copies attached to the application. However, should the applicant decide not to submit his/her records at the time of the application and choose to allow the Determinations Office to gather the records themselves, the applicant needs to stay in constant contact with their doctor's office manager to see if the office has received a request from Social Security requesting the medical records, if the doctor's office copied/mailed/or electronically submitted the records requested. Staying on top of the doctor's office is the only way the applicant will know if the Determinations Office has all the evidence they need to make a decision on his/her claim.

e) After approximately 30 days of waiting for records to arrive from doctor's offices, the Determinations Office begins to proceed in reviewing the application.

- ❖ NOTE: If a doctor has not sent in the disabled person's records at the end of 30 days, there is nothing the Determinations Office can do to make them comply. They will have to make their decision based on what information they have on hand. Doctors' failure to send in medical records requested is the reason behind 90% of all denied Social Security claims. Remember, the Determinations Office is not blessed with a face to face interview with the disabled applicant. They only have a folder of documentation to review in order to make a decision. If the pile of medical records does not provide an accurate view of the person's condition, there is no way the Determinations Office can know otherwise. They can only base their decision on what is written in the records they have in front of them.

- ❖ NOTE: In situations where the Social Security application has been denied and is in the appeals process, it is imperative that the person collect his/her medical records on his/her own and submit them to the Determinations Office themselves. This should continue to happen as long as the applicant is seeing a doctor and has not yet received a decision from the Social Security Office. As stated above, many of the applications are denied due to a lack of medical information because the doctor's office did not submit the records the Determinations Office requested. The applicant should make sure the Determinations Office has what they need to make their decision by hand delivering the medical records themselves!

- f) After reviewing the information at hand, the Determinations Office will decide if there is enough evidence written in the medical records to explain why the disability keeps the person from being able to remain employed at their job. The office then looks to see if the medical condition stated in the records can be found in the listing of impairments set by the Social Security Office:
<http://www.socialsecurity.gov/disability/professionals/bluebook>

- g) If the worker cannot find the condition listed in the Bluebook or determines there is not enough medical evidence in the medical files to make a decision, an appointment will be made for the disabled person to meet with a doctor Social Security has hired for the purpose of obtaining additional medical information. The Social Security doctor will document whether or not the disabled person can sit, stand, walk, talk, etc. He may or may not speak with the disabled person about his/her particular disability.

- ❖ NOTE: Understand that not much will come out of this visit unless the applicant has a very OBVIOUS and SEVERE disability. It is after visits with the Social Security doctor that we have heard comments from the public that the doctor did not address the applicant's disablement with them – all he/she did was his/her own set of questions/tests. This is because the Social Security doctor is paid to only perform certain tests and gather that information in a 15 minute period. VERY OFTEN, an appointment with the Social

Security Doctor is a sure indication that your case will be denied. Thus, the importance of the applicant gathering the medical records themselves and ensuring that the Determinations Office has everything they need to make their decision.

- h) If the condition can be found in the Blue Book listing or if the medical records from all doctors reflect Social Security's definition of disablement by meeting the severity guidelines set forth for that particular condition, the application is approved; if not, the application is denied. A letter of approval or denial is sent to the disabled person at this time.
- h) Social Security's decision is based on the person's disability, education and work history, as well as the employment availability NATIONWIDE for people with that disability. They may determine that the disabled person could work at a job, even though that type of job is not available where that person lives. Is this fair? No, but it is something that we all have to deal with since that is written into the law that Social Security must follow.

In the United States, there is currently a 60% denial rate for people applying for Disability Benefits the first time they apply. The number one reason why this is occurring is there is a lack of medical evidence in the medical charts to support the applicant's claim of disablement.

What can a disabled person do to ensure that their medical record reflects all that is needed to get accepted?

1. The applicant should make sure their doctor knows of their intentions to file for Social Security Disability Benefits. Ask him/her if they are willing to assist with the application. If not, the applicant should find a doctor who will.
2. When going to the doctor's office, the patient should specifically state all of the symptoms they are feeling. They shouldn't waste time carrying on a casual conversation with their doctor. South Louisiana culture teaches us not to complain to others about our problems. The irony with this is that patients take this cultural behavior with them to the doctor's office. When the doctor asks how a patient is doing, the patient shouldn't respond that they feel great! The last thing a patient needs in his medical record is a statement saying they are functioning great when they really aren't. Forget the friendly talk and state the symptoms as clearly as possible. Proper documentation of all symptoms and how the doctor assists the patient with those symptoms is what helps the Determinations Office make their decision as to whether or not the applicant should receive benefits.

❖ NOTE: One way to prevent forgetting all symptoms experienced is to write a journal of symptoms on a daily basis before seeing the doctor and bringing this journal to the doctor's appointment. All of the symptoms can then be recorded and addressed in the medical record. The patient can even request that their journal become part of the medical record if they feel their doctor isn't taking the time to read and document all of their symptoms. If the patient's disability application has already been denied and is in the appeals process, I cannot

stress enough the importance of taking the time to journal the symptoms on a daily basis and requesting that it be placed in the medical records.

- ❖ NOTE: Journaling all symptoms are especially important if the symptoms are ones that cannot be detected on any type of test (such as blood, muscle, nerve tests or x-rays). Symptoms such as pain, dizziness, lightheadness, memory loss, etc. cannot be measured through any type of test. For subjective symptoms like these described, simply keep a daily log and enter the symptoms experienced during the day, how bad they were (including how long the symptoms lasted), and how they affected daily activities (example: I was so out of breath from walking 3 blocks that I had to sit down and rest for 15 minutes before attempting to get up and walk some more).

3. Doctor's statements on the medical records:

- ✓ Should specify the medical reasons as to why a Claimant is unable to work; that is, the physician should indicate the diagnosis, prognosis, and the functional restrictions that result from a patient's impairment(s), i.e. why the patient is unable to return to work.
- ✓ Be detailed regarding a patient's symptomology and stating the frequency, severity and the duration of the symptoms the patient reports as being disabling so far as being able to: sit, stand, bend, walk, balance, crouch, stoop, perform dexterous hand movements, reach overhead, lift a certain amount of weight, perform tasks that are classified as simple, routine, and repetitive.

- ❖ NOTE: As more medical records are recorded electronically, they are often skimpy on listing symptoms with their severity and frequency which is very important since Social Security is looking more for the inability to function more than a specific diagnosis. Also, doctors find electronic record keeping very time consuming and tend to cut back on typing their notes because of it. Be sure the doctor is recording the necessary information into the medical record.

- ✓ Although there may be multiple symptoms, how does each symptom (combined or viewed separately) prevent the person from holding a job at any given time of the day?

4. Request copies of medical records at each doctor's visit. By requesting copies of the visit each time, it will allow the applicant to read what was documented in the chart during the visit. If the applicant discovers that something is not correct, he/she will then need to speak with the doctor about any necessary changes or mistakes that were noticed. Transcriptionists often make mistakes when typing up patient records, which is why it is very important to check the medical records to see if everything is accurate. Once obtaining a copy of the visit, the applicant should place it in a file at

home. When it is time to apply for disability, the applicant will already have copies of the medical records ready to submit.

- ❖ NOTE: If the patient requests copies of their medical record for that day's visit while at the doctor's office, there is no charge. Otherwise, if a patient asks for a copy of all of the records that are in their chart, there will be a charge for every page they need to copy.
- ❖ NOTE: A chiropractor's records are not considered evidence by the Social Security Disability program since chiropractors are not considered to be medical doctors. However, the X-RAYS taken by a chiropractor are admissible as evidence.

5. The Determination Office is looking for three things:

- ✓ the frequency/duration of the symptoms that prevent the applicant from working,
 - ✓ the intensity of the symptoms that prevent a disabled person from working,
 - ✓ Proof that ongoing treatment is being received for the disability. (The applicant should have seen a doctor at least every two months for help with the disabling condition and should still be under doctor's care during the application process).
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- ❖ NOTE: If an applicant is applying for the first time, it is not necessary to get the assistance of a lawyer to help them. If the medical records fully show the applicant is disabled ACCORDING TO THE GUIDELINES ESTABLISHED BY SOCIAL SECURITY FOR THEIR PARTICULAR DISABLEMENT, then benefits should be awarded.
 - ❖ NOTE: Getting a lawyer to help an applicant with their case is not going to insure that the applicant will be granted monthly cash benefits, nor will it make the process go any faster. The lawyer simply has more knowledge of the way the system works than the average person. It is only during a denial stage where an applicant will have their case heard by an administrative law judge at a disability hearing that the services of an attorney are crucial.

One last thing a disabled person should be aware of is that a person applying for Social Security Disability need not be totally unemployed. The person is allowed to make under \$1070 a month (as of 2014) and can still be considered for disability benefits. This is because any amount less than \$1070 is not considered "Substantial Gainful Activity".

The process of applying for Social Security Disability may seem like a lot of work just to get benefits you deserve. Just remember that Social Security is so big that they can't be bothered with "what you deserve". Knowing the rules, gathering medical records before applying, and answering all questions as specifically as possible is all that is needed to get a good disability claim in.

The normal timeframe of receiving either an approval or a denial is anywhere between 3 – 6 months. Some medical conditions are processed much faster (within a month) due to the severity of the disease.

- ❖ NOTE: If a claim is denied, it can take up to two years to get through the appeals process.
- ❖ NOTE: If medical records were not received by the doctors in a timely manner, and the claim was denied for insufficient medical evidence, simply filling for an appeal, gathering the medical records that were missing, faxing them into the Determinations Office, and requesting an “On the record decision” may all that is necessary to turn the denial into an approval.
- ❖ NOTE: If your claim is denied, it is very important that an appeal is made within the time frame specified by Social Security for filing an appeal. Assistance from a professional to help with the appeals process is essential. By appealing, the date the disability claim was originally filed will be protected. If the judge rules the claim to be favorable, Social Security will provide back-pay starting from the original filing date. If an appeal is not requested within the time frame allotted by Social Security, a new application would need to be filed and the back-payments from the first claim would be lost.

Social Security is not trying to make it harder for people by denying requests left and right as the public seems to think they do. No, their office is much like any other office where people go to ask for assistance. All offices will deny people what they are asking for if they haven't provided the documentation requested to prove their need.

More information on how to apply for Social Security Disability Benefits can be found on the internet: <http://www.disabilitysecrets.com> or by calling Jennifer Gaudet at 985-876-0490.

<p>NOTICE: Legal information is not the same as legal advice. Although we go to great lengths to make sure the information in this newsletter is accurate and useful, we recommend you consult an attorney if you want professional assurance that our information and your interpretation of it is appropriate to your particular situation.</p>
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