

How to Win Your Social Security Disability or SSI Case

25 Strategies to Qualify for Benefits and Get Money Faster

A Special Report for Disabled People

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Many people find applying for Social Security Disability benefits or Supplemental Security Income to be among the most frustrating of all experiences. As any disability attorney or SSI lawyer will tell you, frequently those who legitimately qualify for assistance are unfairly or wrongly denied. Statistics reveal that 60 to 70% of claims nationwide are refused. In these instances, obtaining benefits becomes a long, drawn out affair that can span years.

Fortunately, there are ways to speed up the process by sidestepping common pitfalls that cause delays. Additionally, there are methods to present your case in the best possible light. These are proven principles that have shown themselves to be effective over many years, in a vast number of cases. You'll find them all clearly explained in this report.

Whether you're applying for Social Security Disability Insurance, sometimes referred to as SSDI, or Supplemental Security Income, which is usually called SSI, the strategies that work are exactly the same. That's because other than work history and financial requirements, the disability qualification process for both programs is identical. Competent Social Security Disability attorneys or SSI lawyers are familiar with these techniques, and use them on a regular basis.

Please know that these methods for winning your case are not legal advice. The process of becoming eligible for benefits can be quite complicated, and you'll be best served by finding the proper legal representation. The ideas and concepts that follow are intended to assist you in having a productive discussion with your lawyer, and in understanding your case clearly.

Additionally, this discussion is geared for applicants who are applying for benefits in New York, New Jersey and Connecticut. While the techniques are generally relevant in all states, you'll have to consult a SSDI – SSI attorney in your locale to determine how they apply to your specific situation.

As long as you keep those qualifiers in mind, read on to discover how to get your benefits as quickly as possible.

1 – Understand your rights. To get your Social Security Disability or SSI benefit award as quickly as possible, it's best to start by clearly understanding the rules governing eligibility. Here's a concise overview of what you're entitled to.

There are two branches of Social Security law that apply to disability benefits. The first is Social Security Disability Insurance, or SSDI regulations, which apply to applicants with an established work history. The second is SSI or Supplemental Security Income, which encompasses claimants who, under current rules, are considered to be at a poverty level.

To qualify for Social Security Disability benefits, you need to have worked for 40 quarters, or ten years. You also are required to have worked for *five* of the *last ten* years. There are exceptions for younger people. If you are in your 20's or early 30's, you may be eligible with a shorter work history. An SSDI – SSI lawyer can advise you on these particular distinctions.

To qualify for SSI, or Supplemental Security Income benefits, there are no specific work history requirements. However, since this program is for the impoverished, you cannot have assets in excess of \$2000 for an individual, or \$3000 for a family. Assets include cash, investments, real estate you own beyond your primary residence and vehicles other than your main transportation. The cash value of any life insurance policy you may have and other assets can count as well.

With either Social Security Disability or SSI, you cannot earn more than \$980 per month and still be eligible for benefits. This is the “Substantial Gainful Activity” amount for 2009, assigned by the Social Security Administration. If you earn more than this, Social Security considers you to be able to earn enough through employment to be disqualified for benefits, even if you're disabled. Also, keep in mind that this is a “gross” figure, and is *not* net after your taxes and deductions.

Other than these distinctions, the disability requirements for both programs are the same. You have to be disabled with a condition that has lasted or is expected to last 12 months. During this time, you have to be incapable of working at any job in the national economy on a full-time basis. If you can't work at a full-time job on a sustained basis, and meet all other requirements, you're entitled to benefits.

Note that you do not have to wait 12 months after your disability starts to apply for benefits. Once you're ill or injured, you can apply immediately and get the process started.

With Social Security Disability, the dollar amount of benefits you get is roughly the same amount you would receive at full retirement age. If you check the earnings statement the Social Security Administration sends you every year, it tells you how much you will receive if you're disabled.

With Supplemental Security Income, you receive a fixed amount. In 2009, SSI in New York is now a maximum of \$761 a month for someone who is not receiving any assistance from relatives, friends or other people.

Even though Social Security Disability and SSI are federal programs, once you apply the initial determination on your application is made by the state. SSI is partially funded by

New York State, and is administered by the Office of Temporary Disability and Assistance.

2 – Hire a SSDI – SSI lawyer to represent you. The process of qualifying can be complicated, time-consuming and frustrating. There are hundreds of exceedingly complex rules and regulations. A competent Social Security Disability and SSI attorney, who practices primarily in this area, will have a working knowledge of these and be able to use them to your best advantage. It's very similar to going to a specialist when you have a serious medical condition. The physician with in-depth expertise is most suited to give you the best treatment.

There are law firms today that employ non-attorney representatives to handle their SSDI and SSI cases. You'll need to evaluate whether these individuals will be as effective in obtaining your benefits as a lawyer would be. Similarly, at some firms most of the work on your case will be done by support personnel, who have only paralegal or secretarial training. When you're choosing a firm, it pays to ask some questions about who will actually do the work on your file, and represent you at Social Security's Office of Disability Adjudication and Review. Your benefits award depends on the knowledge, experience and skill level of these people.

Additionally, there's a lot of paperwork involved in the entire process from initial application through appeal. Many claimants fill out the forms improperly, and fail to submit them in a timely manner. Either of these errors can have serious consequences. At the very least, you'll suffer a delay of months. In some cases, mistakes can actually result in the dismissal of your claim. You can avoid this difficulty with a disability attorney's help.

SSDI – SSI lawyers usually work on a contingency basis. That means you don't have to advance any money to hire one. An attorney is paid only if he or she wins your case, and usually receives 25% of any back benefits you're awarded, up to a maximum of \$5300. So there's no reason to think you can't afford a disability lawyer.

The bottom line is that there's a significantly higher incidence of benefits being awarded in cases with professional representation than those in which the claimants represent themselves.

3 – Don't feel ashamed. A lot of people who've worked their whole lives and are now disabled, feel guilty or ashamed about applying for benefits. They think Social Security Disability benefits are equivalent to welfare, and it's demeaning to apply for them. In fact, this is a main reason many delay in submitting their claims.

Let's clarify the issue. Applying for Social Security Disability benefits is *exactly the same* as putting in an application for benefits from any other disability insurance policy you've paid into. The *only* difference is this policy is issued by the federal government. You are not asking for a handout. You paid for this coverage with your tax dollars, so it would be available if you needed it.

Consequently, there's absolutely no need for you to feel any shame whatsoever in applying. You're entitled to the benefits if you meet the work history and disability requirements. It's that simple.

Similarly, Supplemental Security Income or SSI is a public benefit for disabled people that is ultimately funded with tax dollars, and no one should feel guilty about applying for it. The wisdom inherent in the American system acknowledges that sometimes citizens need financial assistance, especially when they're disabled. Things happen in life – from time to time, almost everyone needs some kind of help. So don't hesitate to ask for what you need.

4 – Apply immediately. Whether you are seeking Social Security Disability or SSI benefits, you should always apply as soon as you become disabled. Some applicants wait months or even years to file, and then tragically lose their opportunity to collect.

With Social Security Disability, if you let too much time pass before applying you could be out of luck even though you might have worked enough to qualify. For example, although you may have worked for ten years, if you wait you could become ineligible because you don't have a *total of five working years within the last ten*. The ten years are counted backward from the day you apply. Had you filed sooner, you would have met the requirement and qualified.

Sadly, many people who are eligible don't apply in enough time to qualify. This “five years of the last ten” requirement knocks a lot of people out of qualifying, even though they satisfy the 40 quarters, or ten years, of work history rule. Once you're beyond your “date last insured,” you won't get SSDI benefits even with a lawyer's help. Waiting is dangerous.

Even though these work history requirements don't apply to Supplemental Security Income or SSI, it's still a good idea to file an application for benefits as soon as you become disabled, since your payments start from the month following your application date. In addition, because qualification can be an extended process, sometimes spanning a year or two, applying early will speed up your access to much needed financial assistance.

Any back benefits you receive will be determined by the date of your application. With Social Security Disability, you can receive back payments up to 12 months prior to the date of filing, depending on the onset date of your disability. For SSI, you'll receive benefits only from the date of application.

One case the Law Office of Stephen M. Jackel handled involving an autistic adult client illustrates the point well. She had a long history of working at fast food jobs, but experienced difficulties after her father died. By securing SSI benefits for her, she was able to continue receiving group and individual therapy, and caretaker visits four evenings a week. Additionally, it allowed her to move into supportive housing and

maintain her independence. Had she waited, it could easily have precipitated a financial crisis that would have disrupted her therapy and new living arrangements.

You don't necessarily need the assistance of a Social Security Disability attorney or SSI lawyer to apply. Although professional representation is advantageous in many ways, you can file a claim by yourself either online or at your local Social Security office. To apply online, go to: www.ssa.gov

5 – Give them everything they need to make a favorable decision. One of the most common reasons for denial of benefits is that Social Security doesn't have all the information they require to make a decision to award benefits. What's usually missing is the appropriate medical documentation of your disability.

In some cases, the claimant doesn't supply what the Social Security Administration needs. In others, it's because doctors or hospitals don't cooperate and forward records, or those they do supply are not in the most helpful form. The claimant has the burden of proof through most of the process, so if the necessary medical information isn't supplied, the chances of getting a favorable decision are greatly reduced. When an Administrative Law Judge has to make a determination based on insufficient information, the answer will almost certainly be no.

Many people, particularly those suffering with emotional illness, find it very difficult to compile all the required medical data, and assemble it properly. Case files, including transcripts of a prior hearing, are frequently 200 pages or more. But without good records and physician reports, getting approved is much more difficult.

Also, Social Security will send most applicants to its own consultative physicians, who many times perform only cursory examinations. This happens whether it's an evaluation for mental illness or physical disability. In fact, sometimes you'll even be sent to two doctors. Frequently, a Social Security consultative physician will say, in effect, "the claimant has this and that wrong, but in my opinion is able to do light work." Or medium work. Or just enough work not to get any benefits.

Additionally, a larger percentage of people under 50 years of age are denied. If you're under 50, you are considered a younger individual by SSA and it's very difficult to qualify initially, unless you have a serious illness or injury that is substantiated by medical records. At age 50, Social Security regulations make eligibility a little easier.

So whenever you file an initial application or an appeal, be sure to include your most recent medical information with your request, including any test results. The more data to support your position, the better. Be aware that if you don't have medical data from the last 90 days, you will almost certainly be required to get an independent medical evaluation by a Social Security doctor.

These are added reasons why you want to retain a SSDI – SSI lawyer. A diligent attorney will contact all your doctors, all the hospitals and treatment facilities, and develop a

coordinated plan to win your benefits. He or she will contact your treating physicians, gain a thorough command of all the facts relating to your illness or injury, and be ready to effectively answer any question a judge may have when you attend your hearing.

6 – Be complete. List all of your medical conditions on your application, including any mental illness or impairment. Some claimants neglect to do this, and are denied benefits because the picture they present does not show them as disabled.

Remember this: *it's not the medical condition itself that is the issue, but rather how it limits your capacity to work.* If a disability examiner or a judge does not see your overall health condition as diminished enough to fit the definition of being disabled, you won't get any benefits. Consequently, it's in your best interests to fully disclose all medical and psychiatric factors relating to your health status to establish a legitimate basis for an award.

If you have to appeal an initial denial, an Administrative Law Judge will base a decision primarily on what's in your medical records. While your testimony at the hearing will be important, the judge will most likely be very reliant on medical documentation, especially objective records, like MRIs or x-rays. Judges especially want to see records and reports from treating doctors.

Don't assume because you're not currently being treated for a condition that it's not relevant. The fact that an impairment exists is a critical aspect of your total health profile, and should be listed on your application.

One of the main reasons it's important to be complete is that if your condition fulfills Social Security's pre-established requirements for disability, you're automatically eligible for benefits. This is called "meeting a listing." The phrase refers to Social Security regulations that list specific elements of an illness or injury, which are considered in total to constitute a disability. If you qualify in this way, it's a very clean-cut decision and it will be significantly easier for your SSDI – SSI attorney to get an award for you.

Here's an example. The firm represented a man in his 20's suffering from AIDS and mental illness. In New York, AIDS used to be a routine favorable decision. That's no longer the case, since now it often can be controlled with medication and people with the disease can still work. Although the client's physical condition was under control, we were able to "meet a listing" with psychiatric testimony and won his case.

You should also be thorough in including your previous work and educational experience. In this way, you may be able to take advantage of "the grids." These are vocational and educational guidelines. The grids are used in combination with medical parameters, and take your age, education and previous work experience into account to determine if you can work. For instance, a claimant who is 55 or older, with limited education and unskilled work experience, *by law may have to be considered as disabled,*

depending on the limitations caused by his or her illness or injury. This can help you to short circuit an otherwise lengthy approval process and get a quick decision

With serious illness, time is often of the essence as far as benefits are concerned. One client was a victim of myasthenia gravis, a grim medical condition causing fatigue, blurred vision, difficulty in swallowing and overall weakness. We obtained all the records from her neurologist, and made a persuasive case before the Administrative Law Judge at her hearing. The end result: we won almost \$16,000 in back benefits for her, and the ongoing financial support she desperately needs as this dreaded disease progresses.

Needless to say, if you're seriously ill or have been badly injured, you don't want a delay caused by not supplying the appropriate information. If you have trouble getting records from doctors, hospitals or clinics, your lawyer can ask the judge to subpoena them. If you have questions or doubts about what to write on any Social Security form or how to respond to any question, you should ask your attorney first.

7 – If you're denied at first, don't be discouraged. Here's what happens procedurally when you apply for Social Security Disability or SSI benefits. It's a five-phase process.

- **Phase One:** First, you file your initial application. As previously discussed, your attorney can do this for you, or you can do it yourself. If you go to a New York Social Security office, a claims representative will take the details of your case. Your application will then be sent to Disability Determination Services, where it will be reviewed by a disability examiner.

Usually, within two to four months you'll get a determination. A substantial percentage of claimants who will ultimately be found disabled are denied on their initial application. Many applicants who are denied make the mistake of giving up at this point. *Don't!* Get yourself a SSDI – SSI lawyer. In a significant number of cases, benefits that are initially refused can be won on appeal.

- **Phase Two:** In New York, if your local Social Security office tells you that they don't find you disabled, your next step is to request a hearing before an Administrative Law Judge at the Office of Disability Adjudication & Review. In other jurisdictions, such as New Jersey or Connecticut there's an intermediary step, in which you must first request a reconsideration. That can take several more months. However, in New York all disability denials proceed next to the hearing phase.

Generally, it takes anywhere from six to eighteen months before you get to see a judge, depending on which county you're in. Each county in New York has its own hearing office; there are also hearing offices in White Plains in Westchester County, and in Jericho on Long Island. Occasionally a case is called within six months. However, that's unusual and currently claimants wait about a year or more to be called. When your case comes up, it usually will be heard in the county where you live.

Since the government does not adequately fund the Social Security Administration, there's a shortage of judges and support staff, which creates extensive wait periods and backlogs at every level of the system. Also, because many applicants are denied and have to go through the hearings and appeals process, the backlog has gotten worse. This is one of the reasons to apply these strategies judiciously. Time-wise, the deck is stacked against applicants from the start, and doing things the wrong way only results in you waiting longer to get your benefits.

When you appear for your hearing, the judge will evaluate your case, including all the medical evidence of your disability and your testimony. If there's a favorable decision, then you get the benefits.

- **Phase Three:** If the judge denies your claim, the next step is to file an appeal with the Social Security Appeals Council. Your attorney will do this with a detailed letter or brief. An effective appeals letter usually includes a lengthy analysis of the judge's decision, pointing out any factual or procedural mistakes or errors. The requirements for these decisions are highly technical, since Social Security Disability and SSI law is a very regulation-intensive field. Judges can make mistakes, and case decisions sometimes have significant errors.

Once again, here's where having an SSDI – SSI lawyer represent you can pay dividends. Frequently, a seasoned attorney can spot valid reasons for an unfavorable decision to be overturned.

The Social Security Appeals Council can take anywhere from a few weeks to a year to respond. Often you wait another six months. When you receive an answer, three things can happen. First, they can deny your appeal. Second, they can grant the appeal and award you benefits, which happens very rarely. Third, they could send it back for a new hearing to the Administrative Law Judge, with direction on how to correct the errors in the first decision. For instance, the Appeals Council might require a vocational expert present at the second hearing. Or they might instruct the judge to look at a certain medical report more carefully, or to obtain another report from a treating doctor.

For example, Stephen Jackel represented a client with severe mental illness. This young man was denied benefits even though he was so ill that he was later detained by the police for directing traffic in the nude. After the first hearing, an essential medical report was not forwarded to Mr. Jackel for comment. When this was pointed out to the Appeals Council, it ordered a second hearing, during which benefits were won for the client.

- **Phase Four:** If you do get sent back to a second hearing, you're usually going back to the same judge who denied you the first time. If after a second hearing you are still denied benefits, you can appeal again. If the Appeals Council sends

your case back for a third hearing, then you get a different judge. There are only two hearings with the same judge.

- **Phase Five:** On the other hand, if the Appeals Council denies your appeal, and indicates there's no basis to overturn the judge's decision, then you have the option of a further appeal in Federal District Court. A lot of SSDI – SSI lawyers will not take a case that far. At the Law Office of Stephen M. Jackel, if there's medical evidence proving you're disabled, along with errors that provide a basis for challenging the Administrative Law Judge's decision, the firm will appeal your case at the federal level.

Here's some encouraging news. Although most claims get denied at the initial application level, the majority of claimants that appeal are ultimately awarded benefits after a hearing. It pays to fight if you've been refused benefits unfairly.

Always file an appeal if you believe you're disabled, but are denied on your initial application. If you just file a new application, your case will again be routed to a disability examiner instead of an Administrative Law Judge. Then, unless you're submitting new medical evidence, you're likely to be denied again.

When you get a hearing, your disability lawyer has a chance to argue your case in person, and there's a much higher chance of winning benefits. In fact, at the hearing level, approximately 60% of claims for adults are approved for benefits.

Here are the two key points to keep in mind about winning your case: be patient with the process, and fight. As you can see, you have many opportunities to press your case forward, as long as there's a legitimate reason to do so. Those who win benefits don't give up, and make use of every advantage available to them.

8 – Beware of misinformation. There have been instances in which claimants have been given misleading information by Social Security personnel. For example, some applicants go to their local office to file a claim soon after falling ill or being injured, only to be told they need to wait 12 months before filing. This is entirely untrue, as long as the disabling condition is expected to last for at least 12 months. In fact, as previously mentioned it's to your advantage to file immediately and get the process started.

So be careful about where you get your information. It may not be accurate. The best defense against misinformation is to check with your lawyer.

9 – Get treatment. As you can see, medical evidence is the critical element in winning cases. You won't win if you can't prove you're disabled. Solid medical records are the only reliable way to supply that proof. However, medical documentation can only be generated if you're being treated.

In one case the firm handled, the client was clearly entitled to receive Social Security Disability benefits, yet did not get them until he obtained consistent treatment. In his mid-

40's, he worked as a trombone player and warehouseman. Unfortunately, due to alcoholism, drug abuse and mental illness, he lost his home and was living in a shelter. Even though he suffered from severe diabetes requiring daily insulin injections, and serious depression, the judge would still not approve benefits at the first hearing. The reason for denial was insufficient medical records.

The firm scheduled another hearing, giving the client time to get a new primary care physician and enter a regular treatment program. Due to the new medical evidence we presented at this second hearing, he was awarded over \$25,000 in back benefits, and ongoing monthly financial support.

This is another important point about treatment: if medication is prescribed for you and you don't take it, you're putting a noose around your own neck and your ability to be approved. Aside from the obvious medical implications, a disability examiner or judge will have no basis on which to evaluate the true severity of your condition. If you take medicine and you still can't work, your disability is clear. If you haven't taken the medicine, there's an open question. That means at least a delay, and possibly a denial.

If you've stopped taking prescribed medication because you're having side effects or can't tolerate it for some other reason, then address that openly with your doctor. Don't just arbitrarily decide not to take it, because there may be serious medical consequences, in addition to damaging your opportunity to collect benefits. As obvious as this may seem, it is a relatively common problem encountered in the application process.

Realize this too: it's not enough to get the case sent back for a new hearing. You need new ammunition that enables you to win when you're back in front of the judge. If you are not getting treatment, it's unlikely that a judge will find your impairments serious enough to prevent you from working.

Make sure you get treatment even if you can't afford a private physician. There are other options. This example illustrates the importance of getting treatment wherever you can. The firm handled a case in which a man developed Post Traumatic Stress Disorder. He'd worked for a law firm as a clerk. At the time of the World Trade Center crisis, he volunteered to help by driving debris out to the Staten Island landfill.

Being exposed to the trauma of viewing body parts triggered his mental illness. In addition, he developed breathing difficulties after working at the WTC site. He received treatment through a Red Cross program for WTC victims. After he was initially denied benefits, the firm compiled complete treatment records from that organization, and was able to obtain over \$20,000 in Social Security Disability back benefits for him, as well as continuing monthly benefits.

Keep this in mind – it's very difficult to win benefits if you aren't seen regularly by a medical professional.

The lesson is: cooperate with the process, comply with your doctor's and attorney's advice, and do what it takes to win.

10 – Have a “treating” physician. Social Security regulations provide that the opinion of a “treating doctor” must be given more weight than the opinion of a consultative doctor. A “consultative” physician is a doctor who sees a patient one time and renders an opinion.

The definition of treating doctor is someone who has seen a patient over a period of time. While not a hard and fast rule, the longer a doctor has seen you and the more visits you've had, the more likely it is he or she will be considered as a treating source.

This rule makes sense because presumably the treating doctor has a better sense of what's wrong with a patient and what their situation is, providing a “unique” perspective. That means if you do have a regular treating physician and his or her opinion is supported by the medical record, by law that opinion must be considered as more important than those of the independent doctors Social Security may send you to.

The same rule applies to other “treating sources,” since treatment may be supplied by a licensed social worker or other health professional for example, and not always by an M.D.

Generally, if you don't have a cooperative treating doctor, it will be much more difficult to win your case.

11 – Ask your doctor to fill out an RFC. An RFC is a special form that is used to document your “Residual Functional Capacity.” This is what your actual capacity to work is after your disability is taken into consideration.

These forms are used by Social Security to finalize a decision on a case. The form will be used to rate your ability to work, and therefore to justify approval or denial of your claim.

The RFC form is an extremely useful tool when your treating physician completes it, and can go a long way towards helping to win your case. That's because a treating doctor has first-hand knowledge of your condition and prognosis, and as previously mentioned, Social Security considers him or her to be in the best position to determine the impact of your disability on your capacity to work.

When the RFC is properly supported with medical evidence, an Administrative Law Judge will give significant weight to your doctor's opinion.

The problem with medical records by themselves is that they almost never provide direct information on your capacity to work. The RFC form does, specifically stating *why and how* your illness or injury limits your ability to work. It puts the data into a form that a judge is used to seeing, and makes his or her job easier. It's a positive influence towards interpreting the facts in your favor, and winning benefits.

Your SSD – SSI attorney will very likely have his or her own version of RFC forms, which are designed to elicit and present a supporting medical opinion in the strongest possible way for you. These documents often do a better job of convincing a judge than a letter from your doctor, because they consolidate, coordinate and present the exact medical proof you need to win your case.

12 – Change doctors if you need to. Different physicians can have varying opinions about the severity of a medical condition. Even if you're limited to an in-network list of doctors, consider getting additional opinions if you believe that your current doctor's opinion of your capacity to work is not accurate.

It doesn't necessarily have to take a long time for your new doctor to develop treating source status, if you start to have regular visits.

In difficult cases especially, supportive physicians are the difference between getting benefits or not. The firm represented a young woman in her early 20's. Sadly, she had a history of physical and emotional abuse, and as a child was shuttled between foster homes. As a result, she suffered from panic attacks, anxiety and depression. More seriously, she was a "cutter," inflicting mutilating injuries on herself. Additionally, there were incidents of attempted suicide.

At the time we began, she was attending college part time and was on public assistance. She couldn't deal with the stress of juggling a full-time college schedule and work. Her various conditions made her emotionally fragile, and unable to get along with co-workers. Although her claim was initially denied, we won her case with the help of supportive doctors. Her back benefits totaled over \$10,000 and she got ongoing monthly SSI benefits as well, which enabled her to continue attending school part-time.

Be sure your doctor is on your side. Unfortunately, some medical professionals will *tell* patients that they'll support a disability claim, but are unwilling to *back it up* in the medical records. If you have doubts, ask your lawyer to help you flush out the truth.

13 – Mental illness claims require special handling. Those who've never experienced emotional illness rarely have any concept of the profoundly destructive and limiting effect these conditions can have. Unfortunately, this lack of understanding applies to disability examiners and judges too. One would think that in confronting mentally ill claimants on a daily basis, they would have more insight into the turmoil these people experience, but that's not always the case.

As a practical matter, what this means is that if you are a victim of mental illness, don't expect understanding, sympathy or special consideration. This may sound harsh, but it's a reality in the serious business of strategizing to win your benefits. You'll need to have much strong medical proof of mental disability and its constricting effect on your capacity to work.

To win, you'll need to be in treatment and comply with the therapy and any medication regimen your doctor prescribes. It's best to have a psychiatrist or licensed psychologist as a treating source, since these professionals will have more credibility with a disability examiner or judge.

Even the most well-intentioned judges can sometimes lose sight of the unique nature of disabilities with mental and emotional roots. In the AIDS case mentioned earlier, which involved mental illness, although the firm presented persuasive medical proof of the client's disability from a treating psychiatrist, the Administrative Law Judge insisted on seeing "objective" medical evidence, as if an MRI or CAT scan could document an emotional malady. Finally, the judge was convinced that psychiatric reports and treatment notes were the only available medical evidence, and a favorable decision was issued.

If you do suffer from emotional illness that prevents you from working on a full-time basis, do not hesitate under any circumstances to seek benefits. Sometimes claimants are embarrassed by their conditions. For example, the firm handled a case for a woman in her 40's who suffered from bulimia and anorexia, conditions famous for their symptoms of secrecy. Because she had the courage to come forward, the firm was able to get benefits for her.

Another client was a woman who was afflicted with adrenal insufficiency, which resulted in her having masculine features. The condition also brought on symptoms of nervousness, depression and inability to concentrate. She got benefits too.

Many times clients have no history of mental impairment, yet when they're injured and suffer from chronic severe pain, they develop depression. Regardless of how your mental illness presents itself, if it stops or hinders you from working, seek the benefits you may be entitled to.

All the admonitions that apply to physical disability cases apply ten-fold to mental illness or impairment claims. Attempting to prove a mental illness disability claim without an SSDI – SSI lawyer or other professional representation is often difficult. There are judges who are more skeptical about these cases. Somehow, to them a mental disease doesn't seem as real as a physical one. It's an uphill battle, and even with a compassionate judge, you'll need all the help you can get to succeed in obtaining an award.

14 – Avoid missing an exam. If Social Security schedules you for an independent medical evaluation, make sure you show up. Otherwise, your failure to cooperate can be grounds for denial of your claim.

Generally, if you have a valid reason for missing a scheduled doctor's visit, a disability examiner will reschedule it. However, if you repeatedly fail to attend, you'll end up being denied benefits.

15 – Be prompt in everything. Once you receive a denial letter from Social Security, you have only 60 days to file an appeal. If you don't respond in a timely fashion, you lose your right to appeal.

If you're even ten minutes late to your hearing, your case can be rescheduled and you may have to wait months before you see the judge. At worst, your case can be dismissed, and you'll have to start the entire process all over again. *Never miss a hearing*, unless you're too ill to attend or it's a genuine emergency. If you have to start over, it may be two years before you see a dime of benefits, even if you do win.

If you move and don't let Social Security know your new address immediately, a disability examiner may have difficulty contacting you, and deny your claim because your whereabouts are unknown, or for "failing to cooperate." Also, if you don't get a denial letter because of an address change, the time in which to file an appeal may slip past you.

If you receive a letter from a disability examiner requesting a phone call, respond immediately, but notify your SSDI – SSI attorney first. Whenever you receive any notice from Social Security, call your disability lawyer. Correspondence from Social Security is often confusing and can easily lead you to make a mistake that results in a delay or denial of your claim. It's best to get professional advice on how to respond.

Keep everyone involved with your case up-to-date with regard to your medical status and contact information, and you'll avoid unnecessary problems. Follow this rule to avoid unnecessary delays and aggravation: *be alert, responsive and precise in all your dealings with Social Security.*

16 – Collect even if you return to work. If your disability is temporary, you can still get benefits. Sometimes people recover from an illness or injury and go back to work. If you've been disabled for at least 12 months, you may be eligible for a "closed period" of benefits. That means you can get an award limited to the amount of time you were disabled.

In these cases, the fact that you returned to work gives you more credibility. It removes the suspicion of malingering, or attempting to appear disabled when you're not. If a convincing presentation can be made to the judge with medical proof that demonstrates conclusively that you weren't able to work, you stand an excellent chance of winning benefits, which may be substantial.

In one case the firm handled, a client in his late 30's sustained a debilitating back injury and was unable to work, yet was refused benefits. He eventually did return to his prior employment, and was due back benefits of \$26,000. We appealed the case, and won by making a compelling presentation with MRIs, x-rays and other medical evidence.

17 – Work part-time and get benefits. It's possible to work part-time and qualify for benefits, as long as your earnings don't exceed the 2009 Substantial Gainful Activity limitation of \$980.00 per month.

With both Social Security Disability and SSI cases, some clients suffer from conditions that enable them to work on a part-time basis, but are unable to handle a regular job. This is frequently the situation with those who have serious back injuries. They can work for a day or two, and then need several days after that to recover. If you're in this category of applicants, you can still get benefits, depending on how much you work and earn. The amount of benefits you receive may be reduced due to your income, but you'll still be financially ahead of the game with an award.

You're better off working if you can. Most of us feel better about ourselves when we're employed, and have a daily purpose. You have more money and generally an improved outlook on your life and future.

If you're unsure as to your ability to handle work, you can request a "trial work period." This can extend up to nine months, and will allow you to work without jeopardizing your eligibility for benefits. If you can't sustain three months or more on the job, you can have it considered as an "unsuccessful work attempt," and still qualify for benefits.

18 – Stack your benefits. Depending on your work history, previous and current income, and current assets, you may apply and qualify for multiple benefits.

If your work history is limited, a Social Security Disability award might be a small amount because you haven't paid much into the system. However, you can get Supplemental Security Income to bring your total benefits up to the current \$761.00 a month New York maximum. In that case, SSI "supplements" your Social Security Disability income.

If you were injured on the job, you can receive Workers' Compensation and Social Security Disability, however your total benefit cannot exceed 80% of what you earned. Your SSDI – SSI lawyer should be able to refer you to a reliable Workers' Compensation attorney to assist with that part of your case.

There are also reasons SSI benefits may be reduced. For example, if you're disabled but are living with a spouse who earns money, then you may not qualify for benefits or get less than the full amount. Or if you live with somebody, like a parent or a roommate who pays the rent and buys food, your benefits are going to be reduced.

Disabled government employees may be entitled to SSDI benefits in addition to their city, state or federal pensions. Disabled uniformed employees, such as police officers, firefighters and correction officers, may receive SSDI benefits in addition to their disability or regular pensions.

As you can see, these various combinations of factors can complicate the formula by which your ultimate benefit determination is calculated. This is yet another reason to have professional representation. A competent disability lawyer can help you sort through all the details, figure out what you're legally entitled to receive, and fight on your behalf to get it.

19 – Change lawyers if you're not happy with the service you're getting. Here's what your attorney should be doing for you:

- coordinating with your doctors and hospitals or clinics to compile a complete medical file
- obtaining supporting statements from your treating physicians
- making sure the Administrative Law Judge has all the relevant medical evidence
- preparing a “theory of the case” letter, which some judges request in advance as a concise summary of your position – the better disability lawyers will even prepare these when not asked, if circumstances warrant it
- preparing you for the hearing by explaining what to expect, counseling you on responding to questions, and familiarizing you with the judge's personality and approach
- tracking and keeping you abreast of developments in your case
- be in it for the long haul, even if your case has to go all the way up to federal court
- answering all your questions with clear explanations
- returning your phone calls promptly

If you are not getting this level of service, consider visiting another SSDI – SSI attorney, and switching. After all, your financial future is on the line, and you're entitled to the best representation you can get.

Additionally, not all attorneys have full service SSDI – SSI law firms. For example, some lawyers will not take child SSI cases because they can be very difficult to win, with many more factors to deal with. These include the parent's income, expenses, and the number of other children, to name a just a few. Here's an example.

The Law Office of Stephen M. Jackel helped the parents of a 12-year-old child with oppositional behavior. The boy rebelled against any authority figure, was violent, had serious emotional problems and a mild learning disability. He was very disruptive at school, and required medication. By establishing a rapport with the Assistant Principal

and getting extensive reports from the school, we were able to put together a solid case, in conjunction with the usual medical records. His parents were awarded \$8000 in back benefits and continuing monthly support on behalf of the child.

Do this: ask a lot of questions before you decide on a lawyer.

20 – Be respectful and courteous. The people who work at the Social Security Administration are human just like everyone else, and are simply doing their jobs. As with any personal interaction, others respond best to those who are pleasant and friendly. This is the attitude you should maintain in all your dealings with Social Security personnel. It will help your case.

On the other hand, if you're rude, surly and stone-faced, the path to approval of your disability benefits will be paved with burning coals, and you'll be less likely to succeed.

Just be nice, and you'll gain a more sympathetic ear towards your circumstances.

21 – Clean up your act or give up your benefits. If you have an ongoing drug or alcohol abuse problem, it's doubtful you'll win your case. Social Security will not pay when a disability is materially caused by drug or alcohol abuse.

If you're trapped in this dilemma, get into a treatment program immediately. As discussed earlier, you'll need to be in treatment anyway to generate medical evidence proving your disability. More often than not, claimants with a substance abuse issue are also victims of mental illness, and in some instances have never been properly diagnosed.

Here's a case that illustrates the point. The claimant was a young man with a criminal background. He was incarcerated from the time he was 19 to age 26. He had a history of severe mental illness and of being a drug abuser. The firm was able to present both prison records and reports from treating physicians, arguing that his mental illness was a concurrent but separate and distinct condition from his substance abuse problem. We won the case.

Some judges are just as tough to deal with on substance abuse issues as on mental illness. Unless it can be proven that your disability is not a result of substance abuse, your only chance of winning is to stop using the drugs or alcohol. Get medical help and a Social Security Disability attorney or SSI lawyer before you submit your claim.

22 – Be prepared for a CDR. A CDR is a "Continuing Disability Review." Once you're awarded benefits, Social Security will check up on you periodically to see if you're still disabled. Typically this is every two or three years, although it could be sooner. Sometimes it's annually.

If you no longer are deemed to qualify, your benefits will stop. Worse, you may end up owing Social Security money, and have to pay back your benefits. This would occur if it

was determined that your disability ended at a certain point, and you received payments beyond that time.

To avoid these problems, keep your medical records up-to-date. Continue to see your doctor and get treatment. In this way you make sure there's medical documentation that substantiates your condition and inability to work. Generally, if there's no medical improvement, Social Security considers your disability status to be the same.

It's to your advantage to anticipate and be prepared for scrutiny. Few experiences are more devastating than receiving a letter from the government saying your income stops immediately, and you owe Social Security thousands or even tens of thousands of dollars.

23 – Send a “dire need” letter. A dire need letter spells out specific circumstances that expose a claimant to immediate danger. These include not being able to pay for essential medications, eviction or foreclosure, loss of needed services such as utilities, child support obligations, etc.

Sending a convincing letter such as this to Social Security's Office of Disability Adjudication and Review can speed up your request for benefits through an “on the record” review. If granted, your claim will be evaluated before the scheduled hearing date, expediting your opportunity to gain benefits.

You won't get an on-the-record review without compelling medical evidence or true dire circumstances. If your request for a faster decision is denied, you can notify your local congressional representative, and ask him or her to intervene. With a call from a congressional office, you may get faster action. You have nothing to lose by trying, if your circumstances genuinely warrant it.

Needless to say, a dire need letter is best drafted by your disability attorney. Additionally, your SSD – SSI lawyer can also prepare letters to go to any creditors who may be harassing you. Once they're informed that you are awaiting disability benefits because you are unable to work and have no income, they may be more amenable to working out a payment arrangement you can live with.

Here's an example of a particularly difficult Social Security Disability case in which we got a very quick decision and award. The client suffered from diabetes and serious psychological problems. The firm submitted the necessary Request for Hearing documentation, loaded with medical proof, and contacted Social Security staff attorneys to request an “on the record,” immediate decision. Our presentation of the facts was so convincing that the benefits were granted without the client even having to wait for a hearing.

24 - Get a referral to an Elder Law attorney. In some instances, those who are injured in accidents will receive a significant sum of money as a result of a personal injury lawsuit. In other cases, people get inheritances, or have relatives who want to assist them financially.

In either of these scenarios, your disability benefits can be lost without proper planning. Fortunately, the law allows you to create a special trust to receive the funds, and you can still qualify to get your benefits. These trusts fall within the province of a legal specialty practice known as Elder Law. Your lawyer can refer you to an Elder Law attorney who can draft the necessary trust documents.

If you get a settlement or award through a personal injury lawsuit, the proceeds can be placed in a first party Supplemental Needs Trust. Legally, once financial assets are put in a trust you no longer are considered to be in possession of them, and it's for this reason that they don't affect your benefits. However, the funds can still be used for your benefit. For this to happen, you'll have to appoint a trustee who will make decisions about using the money on your behalf.

If you have a friend or relative who wants to help you financially, you can gain a major economic advantage by having them put the money in a trust for you, which can be done while they're alive or after they pass on. In this case, a third party Supplemental Needs Trust serves the function. Financial resources can be placed in the trust for your benefit without disrupting your disability income.

If you receive a substantial amount of money and don't use a trust vehicle to protect it, you'll lose your SSI benefits, and won't be able to get them back until you spend down all the funds. Social Security takes the position that if you have money, you should use it for your own support rather than the government paying for your needs.

Some people have an issue with appointing a trustee, and fear that they're losing control over their own money. However, there are strict laws constraining what a trustee can and cannot do. If you select someone you know is responsible and has your best interests at heart, you can keep your SSI benefits and retain the advantage of any financial resources you receive through a lawsuit, inheritance or other support.

Trust law is complex, and there are many other factors that apply to their use. While many Social Security Disability and SSI lawyers don't handle the formation of trusts, they often will have a working relationship with competent Elder Law attorneys who can assist you.

25 – If your condition worsens, reapply. If you go the distance with your claim and are denied benefits at every level, *you should still reapply for benefits if your condition gets worse*. If new medical evidence can prove that your medical status has degenerated to the point of interfering with your ability to work, you'll have yet another chance to qualify.

Here's an example of a case in which a medical condition deteriorated and we ultimately won benefits. The client worked in a supervisory role for a contractor who provided services to a major telephone utility. She was in her early 50's when she sustained serious injuries in falling down a flight of stairs. Suffering severe pain in her hip, lower back and

knee, she ultimately needed hip replacement surgery. Incredibly, even with these limiting injuries, Social Security denied her benefits.

To make matters worse, she developed depression as a result of the chronic pain. She was then forced to move in with her daughter, since all her financial resources were depleted as a result of not working. Over a six-year period since her initial injury, her life deteriorated in multiple and terrible ways.

When she retained the Law Office of Stephen M. Jackel, the firm immediately set about obtaining up-to-date medical proof of her disability. With a recent MRI and physician confirmation of her ongoing pain and subsequent depression, we were able to present a tight case that swayed the judge's decision in her favor. We won more than \$20,000 in back payments, and an award of ongoing monthly benefits.

Although this was not a case in which the claimant had to reapply for benefits, the point of it is still relevant and clear. If your condition gets worse, pursue your benefits with new documentation of your current health status.

Beyond that, this case holds another lesson. Never give up hope. With the right approach and strong representation you can qualify for benefits, and get the financial support you need and deserve.

Results are achieved by those who pursue them intelligently.

You now have the crucial keys to winning benefits. It's up to you to apply them. These principles have won cases for many disabled individuals who had their financial backs to the wall. They can deliver similar advantages to you.

The most important thing to do right now is to get the process started. As you've seen, getting your benefits can take time. The sooner you get money coming in, the faster you'll be on more solid financial ground.

If you need help, call the Law Office of Stephen M. Jackel at 212-393-1300. Social Security Disability and SSI cases are the firm's primary practice areas.

About Stephen M. Jackel, Esq.

Stephen M. Jackel is a successful Social Security Disability and SSI attorney in New York City. Obtaining benefits for clients in over 88% of his cases, he has a proven track record of protecting claimant rights. Beyond his ability to get results, clients appreciate the dedication and compassion he brings to representing them. He represents SSDI – SSI clients throughout the tri-state metropolitan area.

Disclaimer

This site provides information about obtaining Social Security disability and Supplemental Security Income (SSI) benefits, but it is not, nor is it intended, to give legal advice or apply the law to anyone's individual circumstances. While we welcome your telephone and email inquiries, no attorney-client relationship is created simply by contacting the Law Office of Stephen M. Jackel by telephone or email. It is strongly recommended that you consult an attorney to obtain legal advice regarding your own particular situation. **Every case is unique, with its own facts and applicable law, and success in prior cases does not guarantee results in your individual case.**

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