

## Social Security Disability Guide

### How to Improve Your Chances of Being Approved

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The Social Security disability program is a unique and highly complicated federal system. It is entirely different from other disability benefits systems such as workers' compensation or Veterans Administration disability.

Unlike workers' compensation or some private long term disability insurance plans, Social Security does not allow for partial disability benefits—you are either disabled or not disabled. In order to be eligible for Social Security disability you must meet certain technical requirements regarding your work history and payment of Social Security taxes. The Social Security law requires you, the claimant, to prove through medical evidence that you are unable to perform any of the work that you have done in

the 15 years before you became disabled. As a practical matter, you are also required to prove that you are unable to sustain the physical and/or mental demands of any other jobs which exist in significant numbers in the national economy.

To prove that you are disabled, you must have medical evidence and opinions about the symptoms and functional limitations caused by your medical conditions. The Social Security Administration needs to know the diagnosis of your medical problems. But Social Security is more interested in knowing how your medical problems affect your ability to perform the physical and mental demands of work.

The Social Security Administration uses U.S. Department of Labor standards to assess work-related functional limitations. The physical demands of work include but are not limited to the ability to stand, walk, lift/carry, bend, sit, reach, work with your hands, see and hear, and in some cases crawl and climb. The mental demands of work involve the ability to understand and remember work processes, concentrate, get along with other people in the workplace, and cope with and adapt to stress. The Social Security Administration will have its own doctors assess the degree of limitation in these areas of physical and mental functioning. To prove your disability claim, you must also present evidence, preferably from your treating doctors, concerning these limitations. A qualified attorney will know exactly what evidence is necessary to prove your case and how to obtain it, so you are strongly encouraged to enlist the services of an attorney who specializes in disability law in proving your case.

Based on almost 30 years of extensive practice in the Social Security disability field, Rob Wendt offers the following recommendations to improve your chances of winning your Social Security disability claim.

## 1. Make sure your doctor supports your disability.

Under Social Security disability law, the opinion of a treating doctor is generally given greater weight than the opinions of government doctors who see you only one time or who evaluate your claim solely on their review of your medical records. If your claim is denied, it's because the government doctors gave

written opinions that your medical conditions were not disabling. To win your case, it's very important to get your treating doctor to support your disability claim and to make a more accurate assessment of your physical and mental limitations. Before you decide to file for Social Security disability, it is strongly recommended that you meet with your treating doctors to see if they will support your disability claim.

## 2. Stop working.

If you are able to work on a regular basis, you will not be approved for Social Security disability. Technically, the Social Security disability law allows a disability claimant to perform very limited work and still qualify for Social Security disability. As long as you are unable to perform "substantial gainful activity", you are considered to be disabled. The problem is the government's definition of the legal term "substantial gainful activity".

Under Social Security regulations, if you are earning more than \$1,000.00 per month in before-tax wages as an employee (for 2011), you are automatically presumed to be performing "substantial gainful activity" and are therefore not qualified to receive Social Security disability. Many people mistakenly believe that if they continue to work and keep their earnings under \$1,000.00 per month, they will still be eligible to receive Social Security disability benefits. Unfortunately, work under \$1,000.00 per month can also be considered "substantial gainful activity". Social Security administrative law judges are particularly suspicious of any claim in which a claimant has continued to work after the date of alleged disability—even if it is well under \$1,000 per month. Many judges believe that such claimants are keeping the earnings under the amount in order to qualify for benefits but are actually capable of working and earning more.

For disability applicants who are self-employed, the rules for substantial gainful activity are even more difficult. Even though your self-employment work activity does not result in actual earnings or profits, it can be considered "substantial gainful activity" based on the number of hours you continue to work in self-employment, or the value of the work you have performed if you performed it as an employee for someone else.

The bottom line is that in most cases, you should not continue or attempt to work after you file your Social Security disability claim.

### 3. Develop a financial plan.

If you plan to file for Social Security disability, you need to plan on a way to survive financially for up to one or even two years without earning any income. This is an unfortunate and harsh reality of the process, and it is difficult to tell clients this, but a qualified attorney is doing his clients a disservice to not be clear on this. If your claim is approved, you will receive retroactive benefits, but approval is not guaranteed. It is crucial to have a solid plan for how you're going to survive financially while your case is being processed, and this could take some time, depending on circumstances.

### 4. Don't file for unemployment.

In order to be eligible for unemployment benefits after you become disabled, you must sign papers indicating that you are ready, willing and able to work. If your doctor states on your unemployment form that you are unable to work, your unemployment claim will be denied. Most people who become disabled are in a difficult financial situation and often see unemployment benefits as an option for paying their bills while waiting for their disability claim to be approved.

Unfortunately, many administrative law judges will not award disability benefits for claimants who are receiving unemployment. While the receipt of unemployment does not automatically disqualify you from Social Security disability, many judges feel that claimants who tell one agency (the state unemployment office) that they are ready, willing and able to work while telling another agency (the Social Security Administration) that they are unable to work—are not believable witnesses. This can have disastrous consequences for your Social Security disability claim.

## 5. Consider vocational rehabilitation.

Some disability claims, particularly when the worker is under age 50, can be fairly close cases with significant risk of being denied. In close cases, clients are advised to consider enrolling in vocational rehabilitation while pursuing Social Security disability. If the disability claim is not approved, vocational rehabilitation may be successful in returning the client to the workplace. If vocational rehabilitation is unsuccessful, this may be good evidence to show that the worker is disabled. The South Carolina Vocational Rehabilitation Department provides free disability services to South Carolina citizens. The Veterans Administration also offers extensive vocational rehabilitation services to qualified veterans.

## 6. Continue getting medical treatment.

Many Social Security disability claimants lose their health insurance when they stop working. Claimants who still have health insurance may be unable to afford the deductibles and co-payments for continued medical care. Despite these practical difficulties, it is a big mistake to stop seeking medical treatment when you apply for Social Security disability. It is important to have a written track record of medical treatment to prove your symptoms and functional limitations. To win your case we will need the opinion of your treating doctor and that doctor cannot give an opinion unless the doctor continues to treat you. Under Social Security law, a treating doctor's opinion is given greater weight if the doctor has seen you for a long period of time or if the doctor has seen you frequently.

Many Social Security disability claimants get all of their treatment from a primary care physician or family doctor. This is okay in many circumstances but in some cases it is better to see a specialist. Talk to your family doctor about whether it would be helpful to be evaluated by a specialist for your medical condition.

Many Social Security disability claimants have mental impairments such as depression or anxiety, either as a primary disabling condition, or as a condition that results from being physically disabled and

unemployed. Many people who suffer from mental health issues receive their treatment and medication from their family doctor. However, under Social Security law the assessment of functional limitations from mental impairments must be evaluated by a clinical psychologist or psychiatrist. If depression, anxiety, or another severe mental impairment is contributing to your disability, you are strongly urged to seek specialized mental health treatment from a clinical psychologist and/or psychiatrist. The South Carolina Department of Mental Health provides low cost mental health treatment to South Carolina citizens. The Veterans Administration also provides mental health services for veterans.

Many disability claims involve serious back and neck impairments. Alternative treatment such as chiropractic treatment or acupuncture can often be helpful in dealing with neck and back pain. However, the opinions of chiropractors, acupuncturists, or other alternative medicine providers, are generally not given much weight by the Social Security Administration. If you are disabled due to neck or back impairments you are strongly advised to seek treatment from a medical doctor such as an orthopaedic surgeon, neurosurgeon, or pain management specialist.

## 7. Follow doctors' orders.

Be honest with your doctors and tell them about all of your medical problems. The Social Security Administration pays great attention to what your doctors say about your symptoms, functional limitations and daily activities. You might be surprised what doctors and other medical professionals record in their treatment records. The Social Security Administration is keenly aware of situations in which a claimant told the doctor one thing on one day and said something different to another doctor or to the Social Security Administration on another. Inconsistencies in your medical records can cause trouble in getting your claim approved. Additionally, if you don't tell your doctor about a medical problem, including adverse side effects of medication or pain, the Social Security Administration may conclude that the condition must not be all that severe.

Be sure and follow your doctors' advice—to undergo medical procedures, lose weight, stop smoking, get physical therapy, take medications, or to do home exercises. If you are able to afford to buy prescription

medicine or seek treatment advised by your doctor, your failure to do so can be used against you unless you have a reasonable excuse. If you have concerns about the doctor's advice, discuss this with the doctor so that there will be a record of the discussion in the medical chart.

Don't abuse prescription medication. Many disability cases involve severe and chronic pain, and prescription drug dependence can often occur. If you are misusing or even worse, selling prescription medication to others, you may not only subject yourself to criminal liability under state and federal law, you may also lose your Social Security disability claim. If you are having difficulty with prescription drug dependence, talk to your doctor about it and seek help.

Alcohol or substance abuse is also a potential problem in Social Security disability claims. For example, alcohol or substance abuse may make your condition worse or may cause problems with your prescription medication. In the 1990s, Congress changed the Social Security law to prohibit payment of Social Security benefits to claimants who would no longer be disabled if they stopped abusing alcohol or drugs, even when they had other serious medical problems. If you are having difficulty with alcohol or substance abuse, you should immediately seek professional medical help and do your best to become clean and sober.

## **8. Be honest and straightforward with the Social Security Administration.**

The first and foremost rule in dealing with the Social Security Administration (SSA) is to be honest. There are civil and criminal penalties for being untruthful with the Social Security Administration or willfully failing to disclose important information to obtain Social Security benefits. Failure to be honest with the government can result in denial of your disability claim as well.

Always be cooperative and polite in your dealings with the SSA and the South Carolina Vocational Rehabilitation Disability Determination Division which processes your claim at the initial and reconsideration levels. The government employees who process disability claims are working under

a lot of pressure and many of them are trying to do the best job they can. If you are rude or impolite or refuse to cooperate, it can hurt or delay your claim. If an appointment is scheduled, be on time or call to let them know that you need to reschedule the appointment. Promptly complete and return all paperwork as requested.

The KISS principle (keep it short and simple) is extremely important. When you fill out forms about your disability claim, stick to the basic facts. If you write page after page of responses, this may slow down the processing of your claim and may also suggest that you are not as disabled as you say you are. The purpose of the Social Security disability forms is to get the basic facts concerning your symptoms, functional limitations, daily activities, and work history. Give SSA the information that they request and nothing more.

Avoid emotional appeals about justice or fairness when you fill out forms or speak with government representatives. The Social Security disability process is not based on whether you deserve to get disability benefits. Instead it is based on technical rules concerning your past work, medical conditions, and functional limitations. Appeals to sympathy do not improve your chances of success. Stick to the facts.

## 9. Get legal help.

It isn't necessary to hire a representative before you file your claim. However, it is very important that you hire a qualified attorney before you request an Administrative Law Judge hearing. Your lawyer will need time to prepare your case and obtain medical opinions. Don't wait until the last minute before your case is scheduled for a hearing to get representation.

If you are receiving long term disability benefits and the insurance company offers you a "free" representative, be very careful. The insurance company has a reason for offering "free" representation and it's to protect their interests, not yours. Many of the representatives they use are not even attorneys. And the "free" part of the offer is not exactly what it appears. If you hire an independent and

qualified attorney to represent you, in most cases it will not cost you any more in the end than the “free” representative offered by your insurance company. If you have questions about the representative offered by your insurance company, you are encouraged to contact The Law Offices of Robertson Wendt or another board certified disability attorney first to get the facts.

Get the most qualified and experienced attorney to represent you, preferably one who is a board certified specialist in Social Security disability law. Due to government regulation, all representatives use the same standard attorney fee agreement. If it doesn't cost more money to get the most experienced and qualified attorney available—why settle for less?

## 10. Understand what other benefits may be available.

If you are filing for Social Security disability, it is also important to file for any other disability-related claims for which you may be eligible. If you are a state or local government employee, you may be eligible for disability retirement benefits under the South Carolina Retirement Systems. Note that there is a 90 day deadline after your job has been terminated to file your disability claim. Unlike Social Security, the SC Retirement Systems allow you to file for state retirement disability while you are still employed.

If your employer carries short term disability or long term disability, or if you have a private disability policy, apply for those benefits immediately. If you are approved, it will help provide living expenses while your Social Security disability claim is processed. Additionally, medical evidence used in your insurance claim may also be helpful in the Social Security disability claim. Also be on the lookout for disability policies connected with your credit card, mortgage, or car loan which may pay for those loan obligations based on disability. Some life insurance policies will waive the premium for as long as you are disabled so that your coverage will continue without paying a premium – but you have to apply for the waiver.



If you are a veteran, you may be eligible for service-connected disability or Individual Unemployability (IU) benefits. If your claim has been awarded with a low percentage rating and you believe that you are qualified for a higher percentage rating, you should appeal your rating decision.

If your disability was caused by an on-the-job injury, it is very important to immediately notify your employer of the injury and to hire a qualified workers' compensation attorney to represent you. At the Law Offices of Robertson Wendt, clients are always encouraged to hire a competent workers' compensation attorney to help settle workers' compensation claims for a reasonable amount. Lots of attorneys advertise for workers' compensation claims, but some lawyers do a better job than others, and some have more experience in this area of the law. We can help you find a qualified workers' compensation attorney if you contact us.

Similarly, if you have become disabled due to an accident or injury, we can assist you in finding an ethical and competent attorney to represent you in those claims. Don't simply pick the first person who pops on the TV or in the Yellow Pages. It's important to get legal advice from someone you trust about the qualifications of any lawyer you ask to represent you in an important legal matter.

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At The Law Offices of Robertson Wendt, we want to make sure you have the most current and complete information available, and that you find the most qualified attorney for your situation. If you have questions about the disability benefits process, you're encouraged to call our offices at (843) 723-6555 in Charleston or (800) 704-6630 elsewhere in South Carolina so that we can help you find answers.