

How to Appeal a Denial of Social Security Benefits: Disability Insurance (SSDI) or Supplemental Security Income (SSI)

If you are unable to work because of cancer, you may need to apply for benefits through the Social Security Administration (SSA) in order to receive some income. Two types of disability benefits offered through SSA are Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Many people who apply for these benefits are denied when they first apply. If your application for SSA benefits is denied, this handout gives an overview of the process for appealing the denial.

I was denied Social Security benefits. What are my options?

If your disability claim is denied, you have the option to appeal your denial of disability benefits. If you decide to appeal, you must remember to review your denial notice for instructions and note the specific deadlines for filing an appeal. There are four stages to the SSA appeals process: reconsideration, a hearing by a judge, review by the appeals council, and review in federal court. More information about each stage is provided below.

If I am denied benefits, should I appeal or file a new application for benefits?

It is usually in your best interest to appeal a denial of benefits rather than start a new application. Depending on when you applied for benefits and when your disability began, you might be eligible for retroactive benefits up to a year before the date of your initial application. If you submit a new application instead of going through the appeals process, the new application will “start the clock over,” so you might not get some benefits that you could have been entitled to by continuing with the appeals process. If you have already completed a new application instead of appealing a prior denial, you may wish to consult with an attorney about the possibility of reopening your original claim. If you are successful in an appeal, you may be entitled to back pay.

What can I expect at each stage of the appeals process?

1. Reconsideration

The first stage of the appeals process is called reconsideration. During reconsideration, the SSA will look at your file again, or reconsider your application. SSA will consider any updated medical records or other new evidence that you provide. You usually have **60 days** from the date on your denial letter to submit your request for reconsideration.

- If you are appealing a denial because SSA believes your medical condition has improved, you can meet with an SSA representative to explain why you still have a disability.
- You will likely receive a written decision from Social Security about your reconsideration within three or four months of submitting your appeal request.
- The reconsideration stage of the appeals process does not exist in every state.¹

¹ If you live within one of the following areas: Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New York, Pennsylvania, North and West Los Angeles, California your state or locality will only have three stages for the

2. Hearing

If you go through the reconsideration process and are still denied, you can request a hearing.

- Appeals must be requested in writing within 60 days from the date you receive the decision from the reconsideration.
- The hearing will be conducted by an administrative law judge who did not participate in the original decision or the reconsideration.
- Before the hearing, you will be allowed to look at your file, present new evidence about your medical condition, or clarify details about your claim.
- Preparing a pre-hearing brief may be helpful, especially if prepared by an attorney. This brief would allow you to highlight the most relevant information to your case. A well-written brief can show the judge that you have a compelling case backed up by evidence.
- It is usually to your advantage to attend the hearing (in person or video conference). The hearing is an opportunity for you or your attorney to present your case. You are not required to attend unless the administrative law judge tells you otherwise.
- The amount of time it will take back to hear back after the hearing can vary greatly depending on the hearing office and judge.

3. Appeals Council review

If you disagree with the decision made by the administrative law judge, you may ask for a review by Social Security's Appeals Council. You must request the appeal to the Appeals Council within 60 days of receiving your decision from the administrative law judge.

- If the Appeals Council denies your request for review, SSA will send you a letter that explains why your appeal was denied.

4. Federal Court

If you disagree with the Appeals Council's decision or if the Appeals Council chooses not to hear your case, you may appeal your case to Federal Court. You must file this action in the proper United States District Court within 60 days of receiving your decision from the Appeals Council.

- It can be costly to file a case against the SSA in federal court and the process could take years. You should speak with an attorney about what options are best for your situation.

What are some things I can do to prepare for an appeal?

- Make sure you have your most up-to-date medical records. Having accurate medical information about your current condition is significant in the appeals process.
- Get an up-to-date statement from your doctor about your limitations due to your disability.
 - For example: If your doctor believes you cannot lift more than 20 pounds or stand for more than 20 minutes, then you will want to have a statement from your doctor stating his or her opinion of your condition with this specific information.
 - Having this statement from your doctor will help the SSA to determine whether there are any jobs that you will be able to do despite your current physical condition, and may help strengthen your case.

appeals process, not four. Appeals for people who live in these locations will only include a hearing by an administrative law judge, review by the Appeals Council, and review of their application in Federal Court.

- Review your case file carefully to see whether there is any missing information or mistakes in your medical records that you can correct.
 - Reviewing your case file will help you come up with arguments as to why the SSA is incorrect in its decision to deny you disability benefits and why your application should be approved.

Can I get someone to help me with my appeal?

Yes. Many people choose to handle SSA appeals on their own, but you may also have an attorney or a friend help you with your appeal. This person will be called your “representative” and the SSA will work with them just as they work with you. The representative you appoint will receive a copy of all documents that you receive throughout the appeals process.

Will having a disability attorney or other representative help my chances in an appeal?

Although an attorney is not required in the appeals process, having an attorney can dramatically improve your chances of being successful in your appeal if you are denied SSA benefits.

What will a disability attorney do to help me during the appeals process?

A disability attorney may be able to:

- help you gather copies of your updated medical records or help get statements from your doctor(s).
- help prepare you for questions that could be asked of you during your hearing. Practicing answering questions with your attorney may help ease your fears and may reduce the likelihood of you saying something potentially damaging to your case.
- share personal knowledge of the administrative law judge (ALJ) assigned to your case. This is not always the case, but if it is, then your attorney can prepare you on how to answer the types of questions that specific judge may ask you.

How much do I have to pay an attorney to help with my appeal?

The laws that govern the SSA’s disability programs outline how much your attorney or your third-party representative can charge for representation. Typically, your attorney will be working on a contingent basis, which means that the lawyer does not collect any fees unless your appeal is successful. The attorney will be entitled to **25%** of the *past due* benefits you are awarded, up to a maximum of \$6,000. These fees are deducted automatically and paid to the attorney by SSA. If you are not awarded any past due (retroactive) benefits or “back pay,” your attorney will not be awarded any money. However, your attorney or representative can still charge you for out of pocket expenses, which can include retrieving medical records.

What if I get approved for disability benefits and those benefits are later discontinued?

If the SSA claims that your condition has improved and you are no longer disabled, or terminates your benefits because you have returned to work and are earning enough money, you can appeal the termination of benefits.

If you are appealing a termination of benefits, you can ask to keep your benefits while you go through the appeals process. You can make this request if you disagree with the SSA’s determination that you no longer have a disability or that you no longer qualify for SSI, or that your SSI payments should be reduced or suspended. To request that your benefits be continued

during your appeal, you generally need to respond to your termination letter within 10 days, and you should use SSA Form 795. It is important to note that if you ask to continue receiving benefits while your appeal is pending, and your appeal is unsuccessful at any level, you will be asked to pay back any Social Security benefits that were paid to you while your appeal was pending. You can ask SSA to waive the requirement to repay any benefits, but a waiver is not guaranteed.

If your Social Security benefits are terminated, that does not necessarily mean that your Medicaid or Medicare coverage will also end. As long as you request to have your Medicaid or Medicare benefits continue within 10 days of receiving your Social Security benefits termination letter, your benefits should continue. It is a good idea to consult with an attorney experienced in Social Security appeals if you are considering appealing a termination of benefits or a denial of benefits.

Additional resources:

For possible assistance with Social Security Administration (SSA) appeals:

National Organization of Social Security Claimant's Representatives
(800) 431-2804 or (800) 772-1213 (Can handle cases after client has lost at Request for Reconsideration stage)

Understanding Supplemental Security Income Appeals Process:

<https://www.ssa.gov/ssi/text-appeals-ussi.htm>

Your right to representation:

<https://www.ssa.gov/pubs/EN-05-10075.pdf>

The Social Security appeals process:

<https://www.ssa.gov/pubs/EN-05-10041.pdf>

The Social Security appeals process (in Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New York, Pennsylvania, North and West Los Angeles, California):

<https://www.ssa.gov/pubs/EN-05-10141.pdf>

To appoint a representative you can ask a SSA representative for a "SSA-1696-U4" form:

<https://www.ssa.gov/forms/ssa-1696.pdf>

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