

DAP BASICS: The Appeals Process

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Appeals Process

- Application
- Reconsideration
- ALJ Hearings
- Appeals Council
- Federal District Court
- Continuing Disability Reviews (CDRs)
- 60 DAY DEADLINE AT EACH LEVEL OF REVIEW

Success Rates

- In FY 2022, 38.5% of initial claims were allowed; 61.5% denied
- Reconsideration – 14.7% allowed; 85.3% denied
- ALJ Hearings - 51% allowed; 42% denied; 8% dismissed
 - Individual ALJs – see https://www.ssa.gov/appeals/DataSets/03_ALJ_Disposition_Data.html
- Appeals Council
 - 1% allowed; 11% remanded; 85% denied; 2% dismissed
- District Court
 - 1% allowed; 59% remanded; 34% denied; 7% dismissed
- See <https://empirejustice.org/wp-content/uploads/2022/05/April2022DAPnews-FINAL.pdf>

Processing Times

- Reconsideration
 - 2021- 147 days
 - https://www.ssa.gov/open/data/disability_reconsideration_average_processing_time.html
- ALJ Hearing
 - 2022 – 221-575 days
 - https://www.ssa.gov/appeals/DataSets/05_Average_Processing_Time_Report.html
- Appeals Council
 - 2016 - 364 days
 - <https://www.ssa.gov/open/data/Appeals-Council-Avg-Proc-Time.html>

Applications

- Applications can be filed at the SSA Field or District Office or by phone
 - <https://www.ssa.gov/benefits/disability/#anchor6>
- Title II or concurrent claims can be filed on-line
 - <https://www.ssa.gov/benefits/disability/>
- SSI applications can be *started* on-line
 - <https://blog.ssa.gov/expanding-access-to-ssi-getting-your-application-started-online/>
- Most DAP programs are not funded to represent claimants at the application stage

Who Determines Disability for SSA?

- SSA contracts with state Disability Determination Services for initial and reconsideration determinations
- NY: Division of Disability Determinations, NYS Office of Temporary and Disability Assistance
- Claims analysts collect and review evidence
 - May employ non-examining review physicians
 - May order consultative examinations
 - Should be contacting treating sources for information/evaluations

Reconsideration

- Reconsideration Request
 - On-line
 - <https://www.ssa.gov/forms/ssa-561-u2.pdf>
 - Paper form SSA-561-U2
 - <https://www.ssa.gov/forms/ssa-561-u2.pdf>
 - Disability Report SSA -3441-BK
 - <https://secure.ssa.gov/iClaim/dib>
- Why/how to rep at Recon?
 - See <https://empirejustice.org/training/>

What Happens at Recon?

- Different analyst from Division of Disability Determination (DDD) conducts paper review of initial decision
 - See POMS DI 27001.001 *et seq* - The Reconsideration Process
- No opportunity for face-to-face review or hearing in initial *disability* claims
 - 20 CFR §§ 404.913 & 416.1413a(b)

ALJ Hearing

- Request for Hearing
 - <https://www.ssa.gov/forms/ha-501.html>
 - <https://secure.ssa.gov/iApplsRe/start>
- Claims transferred to Office of Hearing Operations
 - https://www.ssa.gov/appeals/hearing_process.html
 - Claimant entitled to 75-days notice of hearing
- Main focus of DAP representation!

Appeals Council

- Request for Review of Hearing Decision
 - Preferred method is iAppeal on-line
 - <https://secure.ssa.gov/iAppINMD/oao>
- May also be done by snail mail or fax
 - Form [HA -520](#)
 - Appeals Council, SSA/OARO
5107 Leesburg Pike
Falls Church, VA 22041-3255
 - Fax: 1-833-509-0817

Appeals Council Procedures

- Written briefs accepted
 - 20 CFR § 404.975 & 416.1475
- Additional evidence may be submitted
- Not mandatory to preserve issues for appeal, but advisable – *see Sims v. Apfel*, 530 U.S. 103, 120 S.Ct. 2080 (2000)

Appeals Council Review

- “Appeals Officer” may deny or dismiss request for review, or
- AC Member (AAJ) may grant request for review and either:
 - Affirm ALJ’s decision
 - Reverse ALJ’s decision
 - Remand case back to ALJ
- AC may initiate “own motion” review

Late Filings

- What if the 60-day deadline was missed?
- Request Extension of Time to appeal
 - 20 C.F.R. §§ 404.909(b) & 416.1409(b) (reconsideration level)
 - 20 C.F.R. §§ 404.933(c) & 416.1433(c) (hearing level)
 - 20 C.F.R. §§ 404.968(b) & 416.1468(b) (for Appeals Council level)
 - 20 C.F.R. §§ 404.982 & 416.1482 (district court level)
- Need to demonstrate “good cause” on the part of the claimant for missing deadline
 - 20 C.F.R. §§ 404.911 & 416.1411

NON-DISABILITY ISSUES

- Issues involving categorial and financial eligibility, including living arrangements, ISM, etc., are subject to the same appeal process as disability claims
 - Reconsideration
 - ALJ Hearings
 - Appeals Council
 - Federal District Court
 - 60 DAY DEADLINE AT EACH LEVEL OF REVIEW
 - But if appealed within 10 days, benefits can be continued if terminated or suspended