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**Disability Benefits Denials**

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**APPLYING FOR DISABILITY BENEFITS FROM SOCIAL SECURITY**

*Remember: I am not your lawyer yet. Neither my provision of this information nor you reading it makes me your lawyer or you my client. I only become someone's lawyer after both of us have signed a written Fee Agreement and you have paid any required deposit or other payment. This information is meant to give you general information only to help yourself. It is not specific legal advice. Some of it is "law" and some of it are my ideas/opinions from over 40 years representing disabled folks who sought disability benefits from Social Security.*

1. **I suggest you read this several times before applying.** Applying is not a game. Nothing with Social Security is any sort of a game. Everything with Social Security is serious ***business***.
2. I do not believe anything related to a new claim and/or decision on a new claim is "fair." "Fair" has nothing to do with the handling of a claim.
3. All new claims are processed for Social Security by the Colorado Disability Determination Service (DDS). DDS is staffed by Colorado State employees. It processes new claims via a contract with Social Security.
4. I believe DDS sees its primary job as keeping its job and that the best way to keep its job is to deny every claim unless "disability" is established beyond any even remotely possible question or doubt. Even in those incredibly rare cases where even DDS sees "disability" as being overwhelming, I believe DDS will not approve a claim if such approval results in exceeding the national denial rate (i.e., quota), which to meet usually requires at least 65% of all claims to be denied. Thus, I believe that not only are all reasonable doubts resolved by denying the claim, all unreasonable doubts are also resolved by denying the claim. I do not know but seriously doubt that DDS has ever missed denying enough claims to go over the national denial rate. Thus, keep in mind that when deciding claims, DDS is not your friend or buddy or helper.
5. I believe a significant reason many claims are denied is "official" forms that DDS is required to use by Social Security are too poorly drafted to produce accurate and relevant information to determine whether one qualifies for disability payments. Whatever one says when filling out these forms can and I believe often is twisted to say whatever DDS needs them to say to deny the claim.
6. Like all federal agencies, political pressures affect Social Security. That trickles down to DDS. Currently, that political pressure is that most folks applying for disability are simply lazy. It thus basically tells DDS that DDS's job is to deny claims.
7. I believe that the less said the better regarding your disability except as specifically required to complete the actual application itself. Assume everything you say will be used against you. You will likely not know what information (such as your phone number or mailing address) is "decision neutral," and what information is or might be "decision relevant" (such as whether you ever cook yourself a hot breakfast or sit often on your front or back porch).

8. Thus, I believe it very important treat all questions and forms as serious *business*, only answer what is specifically asked, and be accurate and truthful. Guessing as to anything relevant to whether you are or are not disabled almost always causes you trouble. For example, “doing laundry” involves more than a dozen separate steps. Prior to giving a “I do laundry” report, be sure you do each and every one, do each to a schedule, and do each as fast and as well as a typical non-disabled person your age. Otherwise, an “I do laundry” report likely is both false and will hurt your claim. If the truthful answer to a question is “not sure, don’t know, don’t remember” or the like, that should be your answer.
9. Nothing above or below says or is intended to say “don’t apply.” **You will never get a disability payment from Social Security unless you apply.** The key is to take the application process very seriously, get prepared before applying and before filling out any forms, take the time to think about questions and what is the truthful answer, and realize that you will not get any disability payment just because you and/or your doctor says you are disabled. Instead, you must prove you are disabled per Social Security law.
10. “Disabled” is not a “generic” term. It has a very special, very limited meaning for Social Security. For Social Security, “disabled” means (A) having one or more medically verified physical and/or mental impairments or combination of impairments (B) which impairments medically prevent the person from being able to hold a full time, essentially minimum wage or higher paying job anywhere in the U.S. for a year or a part time job at higher wages that pays \$1,130 per month or more (for 2016; \$1,090 for 2015; less in prior years) before any deductions. It is not a test of whether one can do his/ her “usual” work at his/ her “usual” income at or near his/her “usual” residence. Ability to hold a simple, full time job for a year that requires no education, no ability to speak English, no math, and has no physical demands usually means the person is not disabled for Social Security disability benefits. Examples are: sorting orange soda from cola soda; folding laundry; greeting customers; watching TV monitors; and checking boxes to be sure if the order was for 6 items the box doesn’t contain more or fewer items. Non-medical barriers to employment such as “poor work history,” “no recent training,” “criminal past,” “no transportation,” “no one is hiring here,” or discrimination due to race, religion, gender, sexual orientation, or age are not considered by Social Security when deciding if one is or is not “disabled.”
11. However, all full time jobs require showing up on time every day with no more than 1-2 absences, being late, or leaving early in any month; actually doing 8 hours per day, 40 hours per week of actual productive work for 52 consecutive weeks; working productively for two hours without a break; returning on time from breaks and immediately getting back to work; behaving with supervisors, co-workers, and if the job has public contact, with the public; getting at least as much done as everyone else doing the same job; producing work that is done at least as well as everyone else doing the same job; and handling work stress, deadlines, and other demands at least as well as everyone else doing the same job. “Trying” is meaningless. The only thing that counts in the real world of work is getting these done. Assume your boss is “mean and nasty” and never “cuts anyone a break;” it is either a “get the job done or “get lost” boss. Then and only then, think: **can you do all these, every day, for a full year?** If “no” and the “no” is because of physical and/or mental problems, **of course you should apply.**
12. Social Security has two disability programs, one an insurance program and the other, a welfare program. If you are disabled for one, you are disabled for the other. If you are not disabled for one, you are not disabled for the other. [See #10-11 above for explanation of “disabled”].
13. The insurance program is **Social Security Disability Insurance**, often called SSDI or DI or Title II [“2”]. You must be both insured and disabled to get SSDI benefits. One becomes insured by working and paying Social Security taxes in past years. For folks over age 31 when they became disabled, usually they must have worked and paid Social Security taxes for five of the ten years immediately prior to becoming disabled. For example, a person who

says "I became disabled after falling down some stairs on 1/1/14" must have worked and paid Social Security taxes a total of at least 5 years since 1/1/04. Sometimes, folks who have never worked also have this insurance because they can "use" the work history of a dead, disabled or retired parent or spouse or former spouse.

14. The welfare program is **Supplemental Security Income**, often called SSI or Title XVI ["16"]. You must be both disabled and "poor" to get SSI. Social Security has its own definition of "poor." It looks at "assets" and "income." Folks with assets other than one vehicle, a home in which they live, and "normal" household goods generally are **not** poor if they have, or would have if they sold all their other "stuff," \$2,000 or more on the first day of the month under examination. "Stuff" includes money, IRA's, other retirement assets, cash value life insurance as well as boats, vacation homes, etc. The assets of a married person's spouse is counted if they live together. Single persons or married persons **not** living with their spouse usually are usually "poor" if their income from any source does not exceed \$752 a month or, in some instances, less. The income of a married person's spouse is counted if they live together, but then the "poor" amount cutoff is a bit higher.
15. When applying, one question is whether the application is for SSDI or SSI or both. Unless you are *positive* you lack "insurance" and/or cannot meet the Social Security definition of "poor," I suggest you apply for both.
16. Prior to applying, make a list of every single physical and/or mental problem you have that either prevents all work, or prevents some work. If not sure whether a problem does either, keep it on your list. Ask trusted family members or friends to check your list and add things they see as problems for you for work. Even though one or several of these do not prevent or limit work "standing alone," if in combination they do prevent or limit work they should be on your list.
17. To apply, you need to know your legal name and, if different, your name on your Social Security card; your Social Security number; your actual or mailing address; your phone number if you have one; your marital status; if married or ever married, your spouse/former spouse's name and if known date of birth and Social Security number; whether ever married and if so but not currently married how [divorce, death of your spouse] and at least the year that marriage ended; when you were last physically and mentally able to work [see #10-11 above]; and a list of all medical problems that standing alone or in combination prevent or limit work [see #16 above].
18. Accuracy is critical. Any sort of communication barrier you have usually *helps* your claim. Thus, if you cannot read, write, orally understand, and orally be understood by strangers *for highly technical, legal matters*, don't hurt your claim by pretending otherwise. Dealing with Social Security is not like talking with a friend or ordering a burger and fries at McDonald's. It is very serious *business*. Just "getting by" does not cut it. Or, put another way, don't lie about or hide any communication barriers by pretending they don't exist. Instead, *always* ask for an interpreter when talking face-to-face or by telephone with Social Security. Social Security has all sorts of interpreters available. Interpreters of any foreign language are available within minutes once you ask. Sign language interpreters are available also. All Social Security offices have TTYs/TTDs. All Social Security forms are available in most languages. *Always* ask for written materials in both English and your preferred language.
19. You always need to know exactly who you are talking with when dealing with Social Security. Social Security has a standard in person or telephone greeting that goes like this: "This is [first name] from Social Security." That tells you nothing of importance because Social Security has hundreds if not thousands of offices. Lots of people with the same first name are employed by Social Security. Always have pen/pencil and paper when talking to Social Security or get it before continuing the discussion. Ask "Exactly what Social Security office are you calling from and what is your direct dial telephone number and extension number?" Write all that information down. Read it back to the person to be sure you wrote

it down correctly. Save that paper. Only then carry on with the discussion/phone call. If told “we don’t give that out,” tell the person to get a supervisor [who hopefully will cut out that childish nonsense and give you the information] or say “I can’t deal by phone with this; send me whatever you want in writing.” Without this information [name, exact office and complete phone number] it will be impossible to ever contact that person again. And, if that information is refused or appears to be “odd,” the phone caller might be a crook trying to scam you into giving personal information.

20. If you’ve read the above at least three times over two days, you might be ready to apply. Your application choices are by telephone at 1-800-772-1213 or on-line at ssa.gov.
21. Applying via the 800# usually involves being “on hold” anywhere from 10 minutes to several hours. Often, once you get through you give general information the 800# people set an appointment when they will call you to get “the rest” of the information. Your application date will be considered the date of your call. So, holding on is important if you get put “on hold.”
22. If applying “on-line” be sure you are at the real, honest and actual Social Security official U.S. government site. Lots of lawyers and non-lawyer have web sites that will pop up when you “Google” ssa.gov. They are private businesses hunting for business. If you want to apply, you must be at the real, honest and actual Social Security official U.S. government site. Applying “on-line” has many advantages: avoids long phone waits, allows you to complete the application at your own speed as you can do it stop/start, gives you plenty of time to think about how to answer each question, and gives you the opportunity to print out whatever you put into the application. However, since Social Security can and will use anything and everything to deny your claim, fair or not, I strongly suggest you *always* have a helper sitting with you when doing an on-line application. Social Security sometimes assumes anyone who can apply on-line without a helper has “great” computer skills and uses that as an excuse to deny claims. Having a helper avoids that potential trap. About the second or third question with an on-line application asks if you are applying on your own without any help or whether you have a helper. If you have a helper, as I think you should, mark the “helper” box. At the end of the on line application is a “remarks” section, where the helper should add a “remark” indicating that he/she helped you do the application and links your need for help to your disability [bad memory, can’t concentrate, limited use of fingers, lack of computer skills, pain, or whatever is *true*]. ***Always*** print out whatever you told Social Security. ***Always*** keep what you print. This means, of course, don’t apply on line unless you have a working printer.
23. An application usually requires one fill out a second Social Security form: “Disability Report.” It asks about medical problems that prevent or limit work. Like most Social Security forms, it looks simple. Like most Social Security forms, it is not simple. I have a free tip sheet for that form. Call, email or fax me if you’d like my tip sheet for that Social Security form.
24. Once you’ve applied, generally, two Social Security offices get involved. One is a “local” or “field office [FO], and the other is DDS, i.e., the Social Security claims office. The FO is selected by Social Security based on your address and perhaps also on the work loads of whatever FO’s might otherwise be selected. A FO has two general functions at this stage of the process: (A) to be sure all required forms, documents, etc. that are needed to “complete” an application are gathered, and (B) to spy on the applicant when he/she is in the FO and report what they see to the claims office, such as “used cane,” or “used cane in the office but carried it when in the parking lot,” or “was dressed well,” or “acted bizarre,” or “had perfect makeup,” or “couldn’t follow the conversation.” Since all the forms can be done by mail about 99% of the time, unless most total strangers seeing you would think “that person seems to be disabled,” going to a Social Security office could hurt your claim and is usually a waste of lots of your time. Instead, if true say something like “I’m pretty sick and it is really hard for me to go to your office; please mail me whatever forms are

needed.” If you do go in person, dress, smell and otherwise look your usual self. You are not meeting with the President. You are not apply for a job. Don’t lie with your appearance by getting “all dressed up/all cleaned up.” Once face-to-face with the FO employee, your first “order of business” is to get the business card for the person with the person’s telephone extension number on it or a scrap of paper with the information for the person noted in #19. **Always save it.** Everyone who goes in person to a Social Security office is on video from the minute they are within a block of the building, and while in the parking lot/street area, and constantly and everywhere while in the building, until they have entirely left the area. Thus, always use any “medical” devices [walker, cane, oxygen, hearing aids, glasses, etc.] from the minute you are within a block of the building, etc. until you are well away from the building on your way home. If you usually use a cane, walker, etc. but lost it or it is broken, cancel your appointment and stay home until you get a replacement. Don’t bring a box, big briefcase, or big purse unless they are on wheels if your disability involves any physical impairments. Never have anyone “help” or fully dress you, groom you, nag you into “taking a shower” or “dressing up,” etc., because of your visit to Social Security. Look, dress, smell and act the way you’d be most of the time if someone dropped by your home unexpectedly. If you are usually in your PJ’s due to physical or mental impairments, throw a coat over them if necessary for the weather and wear them to the Social Security office.

25. Applicants almost never visit DDS, the actual Social Security “claims office. It is located on Parker Road in Aurora. It is not the “Aurora Social Security Office” or the “Aurora Social Security FO.” Generally, if you are sent “things” to fill out and mail back in an envelope that has a Salt Lake City, Utah address, you are dealing with DDS. As discussed in detail above, keep in mind that no one at any Social Security office and absolutely at DDS is your friend or buddy or helper. As discussed above, I believe DDS sees its real job as being to keep its job by “denying claims.” It does *that* job very, very well. DDS denies so many claims I refer to it as the “Disability Denial Service” instead of its “official” title of “Disability Determination Service.”
26. DDS gathers information via forms and orders at its expense what it thinks will be your “relevant” medical records. It then makes and sends out its decision, which decision does not say it came from DDS. It can and does often send people who have applied to one or more doctors selected by DDS. Many of the doctors have little or no actual work seeing and treating patients but instead often work for big companies who work for insurance companies doing insurance examinations. If you get a notice to go see a doctor picked by DDS, you might want my free tip sheet to help get ready for your examination. Just popping into the doctor’s office without being prepared is a terrible idea. DDS can and does hire “detectives” to follow around people who have applied for disability claims; see #29 below for more information.
27. DDS handles thousands of claims at any given time. It usually takes 4-9 months to get an “Initial Decision” on a new claim. Those whose claims are denied can appeal. An appeal takes about 14-20 more months. So, filing a claim means you need to “be in it for the long haul.” Sadly, it often also means huge and unpleasant changes in your previous living standard, such as moving to less expensive and/or public housing, becoming homeless, needing Food Stamps, and needing government paid/provided medical insurance.
28. Although about 65% of claims are denied by DDS, about 40% of folks who appeal do win their appeal. Here is a way of thinking about DDS. Assume your goal is to travel by commercial air carrier from Denver to New York, but the only seat available when you want to go requires going to Chicago, waiting six hours in Chicago, and then getting on a plane from Chicago to New York. You have no interest in going to Chicago and even less interest in having to hang out in Chicago for six hours. However, to get to New York the day you want to be there you need to take that flight. Your goal with a Social Security claim is an Social Security check [actually, Social Security only pays by either direct deposit or loading a debit card, except in very rare instances]. Think of your payment as being “New York”

and DDS as being “Chicago.” To get your payment, you need to deal with DDS even though for most folks it otherwise is a waste of time as they will be denied and then have to appeal. One cannot, however, “skip” DDS anymore than in the example above can the person get from Denver to New York without the stop in Chicago.

29. Social Security, including but not limited to DDS, has teams of “detectives” who secretly spy on folks applying for and/or receiving Social Security disability benefits. This is done either randomly or because something appears “odd” regarding a specific claim. Sometimes selection happens because someone called Social Security and said the claim is fraudulent. The “detectives” secretly video their assigned persons, interview neighbors, etc. For Social Security, there is no such thing as “partial disability.” Thus, you must look, act, smell, etc., disabled 24/7 whenever out of your home and whenever in your home with the curtains or blinds open. Playing the “I’ll just run into the store without my cane ‘cause its just for a minute and my cane doesn’t look cool” game often ends up “biting you,” and really, really badly. If you are disabled, be disabled 24/7. If you are not disabled, don’t apply. It is unlikely that any specific person will be selected, but you can’t go wrong assuming you will be selected.
30. No law requires anyone to have a lawyer or an Social Security authorized non-lawyer in order to apply for or get Social Security disability checks. Some folks “win” on their own. There are very, very few such folks. I feel having a lawyer’s help immediately after completing your application is “the best way to go.” Some lawyers only help after an initial denial. **I HELP AS SOON AS YOU HAVE APPLIED** with free instruction sheets for most of the forms you’ll be sent and with instruction sheets on how to get ready if Social Security sends you to see a doctor. You do not have to be my client to ask for and get my instruction/tip sheets; I send them to anyone who asks.
31. The likelihood of winning an appeal after a DDS denial without a lawyer is terrible. If you are denied, see a lawyer to talk about appealing. Although you have 60 days to appeal, start calling lawyers the day or the day after you get your “claim denied” letter. I see no benefit whatsoever for anyone hiring an Social Security authorized non-lawyer to help and lots of risks for that course of action. If you hire someone, be sure they are a lawyer who carries lawyers’ malpractice insurance. I see no benefit in hiring someone who does not have an actual office in Colorado. There is nothing they can offer you that a competent local lawyer cannot offer you. Out-of-state lawyers often know nothing about the “Colorado” medical scene. For example, I had to fix a case in which an out-of-state lawyer didn’t know that the person was living in a mental health residential care facility with 24/7 live-in professional staff. The out-of-state lawyer thought the person was living on his own in his own apartment. The claim was denied because although the person had many mental problems, Social Security felt the claim “couldn’t be” very serious since the person was able to live fine on his own in his own apartment. It took me several years to fix the mess that out-of-state lawyer created and during those years the person didn’t get one cent from Social Security.
32. Most all lawyers charge the same: 25% of any back Social Security benefits won, not to exceed a total fee of \$6,000 even if the back benefits are over \$24,000. If the appeal is lost, there is no charge. Expenses, such as buying medical records, postage, etc. are typically charged regardless of the final decision in the case. Shop local; stay away from those who are not local.
33. I have been a lawyer since 1970. I carry malpractice insurance. I have had my office in metro Denver since the last century. If you apply, get denied, and live in Denver, Boulder, Adams, Arapahoe, Douglas, or Jefferson county; or in or south of Weld County, or east of Summit County; I usually offer a free first visit to discuss your claim. I have over 40 years’ experience with Social Security disability claims. I am honest and blunt at that visit. If I don’t think I can help, I say so. If I do think I can help, I explain my program. Your free visit does not obligate you to hire me nor me to take you case.