

## 1 **Disclaimer**

Because this is a group training or presentation, please do not share any private or confidential information. There is no right of confidentiality for anything that is asked or discussed during this training. We are mandated reporters and obliged to report abuse and neglect of disabled adults. This training is not a private consultation for legal advice and no attorney/client relationship is formed between you and the Office of Clients' Rights Advocacy. If you have an individual and private question you want to ask us, please call our office for an intake appointment or give us your name and number before you leave the training today and someone will call you back.



## 2 **Social Security Denials and Appeals**

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## 3 **Levels of Appeal**

- Reconsideration
- Hearing
- Appeals Council Review
- Federal Court

## 4 **Initial Determination**

Social Security makes an initial determination on issues such as whether someone is eligible for benefits, the amount of payment, and whether someone has an overpayment and these determinations are appealable.

## 5 **Request for Reconsideration**

- 1  **Appeal Denial Based on Medical Decision**
  - ▀ Form SSA-3441 Disability Report Appeal
- 2  **Appeal Non-Medical Decision**
  - ▀ Form SSA-561 Request for Reconsideration

## 6 **Request for Reconsideration**

- ▀ The time period for filing a Request for Reconsideration is 60 days from the date of the notice (20 CFR 416.1336)
- ▀ SSA presumes the notice was received by the fifth day after the date on the notice (20 CFR 416.1401)

## 7 **Request for Reconsideration**

You may appeal past the 60 day timeline, but you must assert good cause for failing to file the appeal on time

## 8 **Examples of Good Cause**

- ▀ Serious illness
- ▀ Death or serious illness in immediate family
- ▀ Records were destroyed or damaged by fire or other accidental cause
- ▀ Seeking evidence to support claims
- ▀ Requested additional information from SSA during appeal timeline

- Inadequate notice

#### 9 **Continuation of Benefits During Appeal**

- When appealing a notice saying a beneficiary is no longer disabled, so that the termination is on medical grounds, full benefits will continue through the ALJ hearing if the beneficiary appeals within 10 days of receiving the initial or reconsideration notice and asks that the benefits continue.
- The beneficiary will be asked to fill out the Benefit Continuation Election Statement.
- If the beneficiary later loses, you may be required to pay the benefits back.
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#### 10 **Continuation of benefits during appeal**

- For other issues, continuation of benefits is only available to persons who receive SSI or SSI and Title II benefits and only to the first reconsideration step in the appeal process.
- People who receive Title II benefits only are not entitled to continued benefit for non-medical issues.
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#### 11 **3 Reconsideration Review Options**

- Case Review
- Informal Conference
- Formal Conference

#### 12 **Case Review**

- Claimant will have opportunity to review SSA file
- Present oral evidence
- Present written evidence

#### 13 **Informal Conference**

- Opportunity to Review SSA File
- Present oral evidence
- Present written evidence
- Opportunity for both parties to call witnesses
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#### 14 **Formal Conference**

- Opportunity to Review SSA File
- Present oral evidence
- Present written evidence
- Opportunity for both parties to call witnesses
- Can submit requests to subpoena adverse witnesses and relevant documents
- Opportunity to cross examine adverse witnesses
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#### 15 **What SSA must consider in redetermination?**

- SSA will review evidence used to make initial determination and any new evidence received (20 CFR 416.1420)
- SSA uses preponderance of the evidence standard

#### 16 **Filling Out the SSA 561 Form**

- Keep your reasoning for the appeal broad
- The more specific your reasoning, there is less opportunity for different arguments

#### 17 **Appeal to Administrative Law Judge**

- If you disagree with the request for reconsideration determination you may appeal and request a hearing before an Administrative Law Judge (ALJ)

#### 18 **Timeline When Appealing to ALJ**

- Must request a hearing within 60 days from the date you received the notice of reconsideration determination.
- You or your representative may review your SSA file and submit new evidence no later than 5 days prior to the date of the hearing and subpoena requests not later than 10 business days prior to the hearing
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#### 19 **Appearing before an ALJ**

- Do Not Want To Appear: You may ask that the ALJ make a decision based on evidence in your file
- Want to Appear: SSA will provide notice at least 75 days prior to the hearing

#### 20 **Notice of the Hearing**

- The Notice of the Hearing will contain:
  - Time and place of hearing
  - Statement of the specific issue to be decided
  - Statement informing claimant of the right to have representation
  - Explanation of the procedures for requesting a change in time and place of the hearing
  - Reminder that the ALJ may dismiss the hearing request if claimant fails to appear without good cause

#### 21 **Who's Present at the ALJ Hearing?**

- Claimant
- Representatives
- Administrative Law Judge
- Clerk
- Vocational Expert
- Witnesses

#### 22 **What Happens at the ALJ Hearing?**

- The Administrative Law Judge explains the issues in your case and may question you and any witnesses you bring to the hearing.
- The Administrative Law Judge may ask other witnesses, such as a doctor or vocational expert, to come to the hearing.
- You and the witnesses answer questions under oath. The hearing is informal but is recorded.
- You and your representative, if you have one, may question any witnesses and submit evidence.
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#### 23 **Appeals Council**

- Appellant or other party may request an Appeals Council review of the ALJ decision.
- The Appeals Council will either decide the case or return the case the ALJ for further action

#### 24 **Timeline to Request Review by Appeals Council**

- You or your representative may ask for review by the Appeals Council within 60 days after receiving the ALJ decision
- The Appeals Council may decide to review your case on its own within 60 days of the date of the decision

#### 25 **When The Appeals Council Will Review A Case**

- Abuse of discretion by ALJ
- Error of Law
- Actions, findings, or conclusions of the ALJ are not supported by substantial evidence
- Broad policy or procedural issue that may affect the public

#### 26 **Appeals to Federal Court**

- If the Appeals Council issues a decision or denied your request for review you may appeal to the proper U.S. District Court
- Must file complaint in the U.S. District Court within 60 days after receiving notice of the Appeal Council's action.

#### 27 **Helpful Tips**

- Keep all letters and envelopes
- Have 3 ring binder
- Put all letters in chronological order
- Keep all records
- Keep copies of each appeal

#### 28 **Questions and Contact Information**

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