

WHO DECIDES IF I AM ELIGIBLE FOR SOCIAL SECURITY DISABILITY?

By David F. Chermol, Esquire

One of the questions clients inevitably ask is: Who determines if I am disabled anyway? The answer is it depends. To be absolutely clear, it is not your doctor. Although evidence, especially opinion evidence, from your doctor is critically important, the Social Security Administration will make its own independent decision.

When you first file an application for Social Security disability or SSI, the decision on your case is made without a hearing. It is based on the medical records you submit, the medical records SSA obtains, and the forms you completed. The person who makes this decision often does it in consultation with a physician who has never seen you. The result of this very impersonal process is that the large majority of people are denied at the initial level. Generally, in order to win you have to pursue an appeal by requesting a hearing after the initial denial.

If you appeal your case and request a hearing, then an administrative law judge will decide your case. The judge has independent authority to make a determination and is in no way bound by the prior decision on your case. The judge's decision will be based upon a short in-person hearing and all of the evidence that is in the file. In my experience, the decision on your case is generally made, at least tentatively, before the hearing. That is why it is so important to have a lawyer present a coherent argument to the judge as to why you should win before the hearing. If you go in unrepresented, good luck!

If you do not win at the hearing level and you appeal, the Appeals Council will review your case. This again is an impersonal procedure. The members of the Appeals Council never see you and they do not hold a hearing. If you are not represented by a lawyer at this stage, you have very little chance of success.

If you lose at the Appeals Council level, you have a right to sue the government in federal court. At this stage you want someone who has serious credentials in this type of federal court Social Security disability litigation. A federal judge will review your case on paper only. There will be no hearing. It is very unlikely that you can win outright at the federal court level, but you have a good chance, with the right lawyer, of getting the case sent back for a new hearing.

In the end, you wait a long, long, long time at each stage of this process. That's why when you get your chance to have a hearing, you have to make it count. The best way to do so is to be represented by a lawyer who really knows the system. The fees you pay in these cases are set by federal law. So unless you are dealing with an unscrupulous representative, your fee will be the same wherever you go. Since you are going to pay the same generally everywhere, you might as well have the best lawyer possible representing you.

