

**WINNING SOCIAL SECURITY DISABILITY BENEFITS:  
A STEP BY STEP BY STEP GUIDE TO  
UNDERSTANDING AND APPLYING FOR SOCIAL  
SECURITY DISABILITY BENEFITS**

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## Foreword

Here at Andalman & Flynn, Attorneys at Law, we realize that navigating the Social Security System is a difficult, confusing and often frustrating experience. With this booklet we hope to provide applicants with a clearer view of the process for obtaining Social Security Disability benefits, and show them how to best manage some of the intricacies of the system.

There is no substitute for obtaining experienced legal assistance such as we provide. We encourage all applicants with legal question to visit our website at:

<http://www.andalman-flynn-law.com/>

Please call or write our office with questions or to set up a consultation. Most consultations are free, and in most cases there is no fee unless you are awarded benefits.

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## TABLE OF CONTENTS

FOREWORD.....	2
TYPES OF SOCIAL SECURITY DISABILITY BENEFITS.....	3
STEPS TO UNDERSTANDING THE SOCIAL SECURITY DISABILITY PROCESS.....	3-5
Tips for building a winning case.....	5-6
Tips for applying for social security disability benefits and the adjudication process.....	9
FREQUENTLY ASKED QUESTIONS.....	10-13
DISCLAIMER.....	13

## Types of Social Security Disability Benefits:

This booklet is intended as a guide to winning Social Security Disability Insurance Benefits. However, for the sake of clarity, a brief description of other benefits available under the Social Security system is provided.

Social Security disability benefits are provided through five programs. Some people may fit into more than one category, and may be eligible to receive more than one benefit. The most common benefits received are Social Security Disability (SSD) benefits and Supplemental Security Income (SSI) benefits.

Depending on your own personal situation, you may be eligible for one or more of the following:

1. Social Security Disability Insurance Benefits: a benefit for disabled workers who have worked long enough to be covered under the Social Security system;
2. Supplemental Security Income Benefits: a benefit paid to disabled persons who meet federal poverty guidelines, regardless of whether they have worked or paid into the Social Security system;
3. Disabled Widow and Widower's Benefits: a benefit available to disabled adults over the age of 50 whose spouse worked under the Social Security system and is deceased;
4. Disabled Adult Child Benefits: a benefit available to unmarried, disabled adults whose disability began before age of 22, and who has a parent that has worked under the Social Security system, and is deceased, retired, or disabled;
5. SSI Child Disability Benefits: a benefit available to persons under the age of 18 who are disabled.

### Step 1: Determining Eligibility

#### A. Taxes and Credits

In order to qualify for Social Security Disability Insurance Benefits, an applicant must have worked in a job[s] covered under the Social Security System and paid Social Security taxes. By working and paying taxes, you earn social security credits. The number of credits required to qualify for disability depends generally on your age and how long you've worked.

The Social Security administration has provided a chart detailing the number of credits needed to qualify. This chart can be accessed at: <http://www.ssa.gov/retire2/credits3.htm>. In 2010, you must earn \$1,120 in covered earnings to get one Social Security or Medicare work credit (often referred to as a quarter of coverage). Therefore, you must earn \$4,480 to get the maximum four credits or four quarters of coverage for the year. <http://www.ssa.gov/retire2/credits1.htm>.

Check your Social Security Statement to see how many credits you have earned.

## B. The Definition of Disability

The Social Security Administration considers an individual disabled if they meet three criteria. The Administration requires that:

1. The applicant cannot do the work that they previously did;
2. The applicant cannot adjust to other work because of the applicant's medical condition(s); **and,**
3. The applicant's disability has lasted or is expected to last for at least one year or to result in death.

SSA makes it easier to win benefits if you are over 50. If you are over 55, you generally only have to prove that you are disabled from performing the work you performed in the last 15 years. If you are under 50, on the other hand, you have to prove that you are disabled from performing any job that exists in the national economy.

## C. How Social Security Determines if You are Disabled



Step 1: Are you working? The Social Security Administration will look closely at whether you have worked after the date that you claimed you became disabled on. If you are currently able to work, and are earning over \$1000.00 per month, SSA will presume that you are able to work and deny your claim.

Step 2: Is your condition severe? In order to qualify for social security disability insurance benefits, you must have an impairment or combination of impairments that significantly limits your ability to do work activities. If your conditions are found not severe, then SSA will deny your claim.

Step 3: Is your condition one that meets or equals the Social Security Administration's medical listing? The medical listing can be found at <http://www.ssa.gov/disability/professionals/bluebook/listing-impairments.htm>. The listing describes severe impairments of each major body system that would preclude an individual from performing gainful work. If you meet or equal the listing, SSA will find you disabled. If you do not meet or equal a listing, then SSA will go to Step 4.

Step 4: Can You Do the Work That You Did Previously? In examining your ability to do past work, the SSA will compare how your past work was performed, and your current ability to perform it. Note that SSA will only look at "relevant" past work. Relevant work is work that : 1.) you performed in the last 15 years; 2.) involved significant activities done for pay; and, 3.) you performed long enough to be considered competent in it. If you can do your previous work, then your claim will be denied.

Step 5: Can You Do Any Other Type of Work? If the SSA determines that you are no longer able to perform your past work , SSA will look at your medical conditions, as well as vocational factors of age, education, past work experience and the transferability of your work skills to determine if you can do any other work.

Depending on the answers to these questions, the Social Security Administration will determine whether you qualify for disability benefits. In order to maximize your chance of winning a favorable adjudication of your claim and present your disability in the most favorable light to you, and aid in the adjudication of your claim, Andalman & Flynn has the following tips.

#### Tips for Building a Winning Case:

##### Before You File:

- Make sure you are in treatment with a doctor.

- Talk to your treating doctor. Make sure you explain your symptoms to your doctor. If your doctor does not know the extent and severity of your symptoms, the doctor's records will generally not support your disability claim. And find out if your doctor thinks that you are disabled to work, if your disability is expected to last more than a year, do determine whether the disability application is the right path for you to take.
- Go on the web to [ssa.gov](http://ssa.gov) and read up on how the Social Security Administration decides these claims and review the application paperwork. See below
- Determine the complexity of your case and whether or not your medical limitations and skills prevent you from giving it the time and effort that is needed to win an award of benefits.
- If you decide to hire an attorney, choose one who is experienced and concentrates in Social Security Disability benefit claims. The Social Security Disability process is long and confusing, but experienced attorneys will be able to handle the process in a manner designed to prevent confusion and anxiety on the part of their client, the applicant.

## Step 2: Applying for Social Security Disability Benefits

### A. The Application

All applicants must fill out the required documents in order for Social Security to process their claim. The required documents can be accessed at <http://www.ssa.gov/applyfordisability/>.

The documents and application can also be accessed by calling the Social Security's toll-free number 1-800-772-1213. You can also visit your local Social Security Administration office.

You should carefully fill out all required sections of the application to the best of your ability, being accurate and truthful. With that being said, it is important not to minimize your symptoms or pain.

### B. Required Information and Documents

Social Security's website has a list of required documents and information that is necessary for adjudication of your claim. That list has been reproduced here for your benefit.

- Your Social Security number and proof of your age;

- Names, addresses and phone numbers of doctors, caseworkers, hospitals, and clinics that took care of you and the dates of your visits;
- Names and dosages of all the medications you are taking;
- Medical records from your doctors, therapists, hospitals, clinics and caseworkers, that you already have in your possession;
- Laboratory and test results;
- A summary of where you worked and the kind of work you did; and
- Your most recent W-2 form or, if you were self-employed, a copy of your federal tax return.

Many people apply initially without an attorney. If you do that and get denied, you should consult an attorney to represent you on an appeal. Your attorney can help you gather additional medical and vocational information helpful in successfully adjudicating your claim.

Here at Andalman & Flynn we have found that additional information from medical providers, and sometimes family and friends, are critical in ensuring that claims are successful. Information and documentation that we commonly request, includes:

1. Information from your medical providers describing your symptoms and limitations. Merely reporting that “you are disabled” is normally insufficient;
2. Additional medical or vocational testing and evaluations to provide more medical documentation of your condition and/or the limitations that your condition imposes on you.
3. Statements from friends, family, and co-workers regarding your disability and its effect on your life.

### Step 3: The Claim Adjudication Process:

Applying for Social Security Disability Benefits can be long and frustrating process. Typically it takes three to six months to get a decision on the initial claim. If denied, it often takes another three to six months to get a decision on the request for reconsideration. If denied on reconsideration, you then must file a request for hearing. It currently takes over twelve months to get a hearing. Be mindful of the specified deadlines to appeal a Social Security Administration decision. Appeals should be filed within 60 days of the date of the denial.

It is important to stay in treatment during the application process.

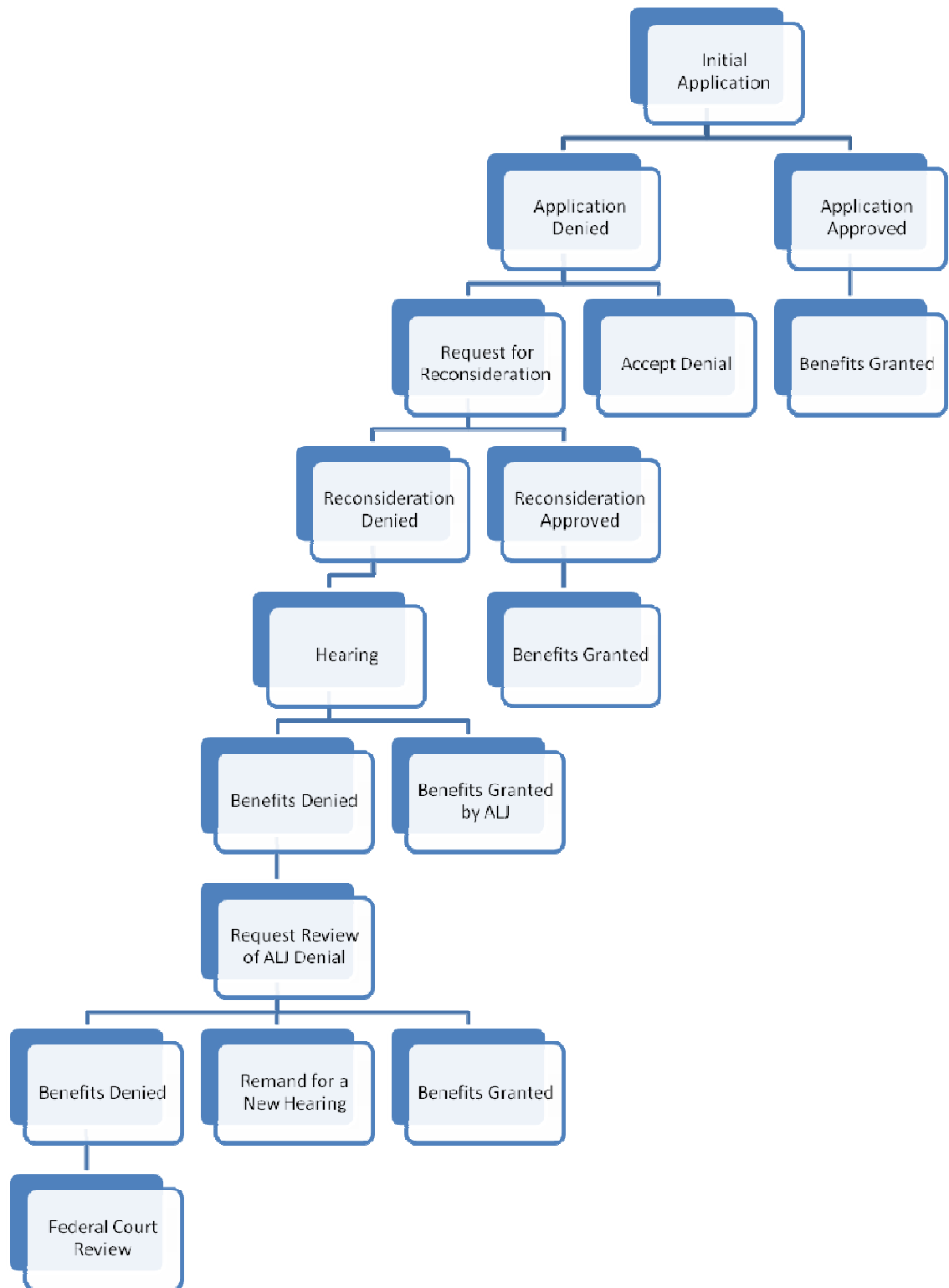
At Andalman & Flynn, our attorneys can help you anticipate the many questions your case may present to the SSA, and can assist you in answering those questions to the satisfaction of the SSA. After many years of working on SSD claims, we are familiar

with the methods SSA uses to evaluate, approve and reject claims. We use that experience to help our clients get the disability benefits awards they need.

Remember, Social Security wasn't designed to care only for the elderly of America. It was created to care for workers who, through illness or accident, have the misfortune to become disabled from work. As a compassionate society, the Social Security Act recognizes that we should provide assistance for those of us unable to work and fully support ourselves as a result of a major disability.

The flowchart below depicts the lifetime of a claim:





Tips for Applying for Social Security Disability Benefits and the Adjudication Process

- Make sure to keep your attorney updated with any change in your mailing address, phone number, treatment provider, medical condition, or return to work.
- When filling out application forms, be sure to list all of your impairments, not just your major impairment. For example, if your major diagnosis is multiple sclerosis, but you also have chronic migraines, be sure to include your chronic migraines as one of your limitations. Don't fail to describe a limitation simply because it is not as significant as another limitation. The SSA must look at all of your limitations and their combined effect on your ability to work.
- Inform your attorney of any alcohol or illegal substance use that is current or in the past. Alcohol or drug usage is not necessarily fatal to your claim, but you need to make your attorney aware of it so that they will be able to make the necessary arguments in your application and/or appeal documents. Congress has mandated that claimants be denied disability benefits if alcohol or drug abuse is material to the finding of disability.
- Be open to completing additional testing that is useful in determining disability.
- Be sure to bring your attorney any documents in your possession relating to your medical care and treatment, your injury, or your employment.
- Don't get discouraged by initial denials by the Social Security Administration. Patience, persistence and having an experienced attorney work on your behalf often results in an award of benefits.

### Frequently Asked Questions

### 1. Can I work and Still Receive Social Security Disability Insurance benefits?

Working and receiving benefits is possible under very limited circumstances. Generally, if your wages are not “gainful,” as in less than \$800.00 gross wages per month, or your work is not “substantial,” then you can work and also get Social Security Disability benefits.

However, working part time or attending school will be considered by SSA as factors that may result in a denial of benefits. Make sure to discuss this possibility with your attorney before choosing to work or attend school.

Do note however, that once you are found disabled you can get a trial work period of up to 9 months total (not necessarily consecutive), during which you can try work while still getting Social Security Disability benefits.

### 2. If my claim is successful, how much will my benefit award be?

Your benefit amount depends upon how much you paid into the Social Security system. Monthly individual benefit amounts for Disability Insurance Benefits range on average from approximately \$800 to \$2100 per month. If you have dependent children under age 18, you will likely be paid an additional 50% of your benefit amount for your children’s support. You will not get paid for the first five, full months of disability. You cannot get paid back benefits dating more than one year prior to your date of application. Therefore, it is important that you submit your application for Social Security Disability benefits within 17 months of stopping work.

### 3. How much will it cost to hire an attorney to represent me?

The Social Security Administration must approve all attorney fees. It is a misdemeanor for an attorney to charge a fee that has not been approved. The only fee agreement that is automatically approved is a contingency fee of 25% of accrued benefits that may be awarded to the claimant, with a cap on the attorney’s fee of \$6000.00, which applies through a hearing before an ALJ. However, this cap can be increased from time to time by the Social Security Administration or by the United States Congress. Should your case progress beyond the hearing stage, the cap is removed. However, the Social Security Administration still must approve all attorney fees.

4. Do my workers compensation benefits affect my receipt, or the amount of my Social Security Disability benefits?

You are still eligible for Social Security Disability benefits even if you have already received workers compensation benefits. However, if you successfully apply for Social Security Disability benefits and receive an award of benefits, those benefits will be reduced (“offset”) by your workers compensation benefits under a formula in the SSA law.

5. What if I receive an award of past due benefits? Will I have to repay public assistance that I previously received?

In general, yes. State welfare programs, including Aid for Families with Dependent Children, will need to be reimbursed from your award of past due benefits. Typically, the SSA will automatically offset these expenses from your award.

6. What will happen if my medical condition improves?

If your medical condition improves to the extent that you are no longer disabled, Social Security may end your benefits. Medical improvement is any decrease in the medical severity of your impairments which was present at the time of your most recent favorable medical decision that you were disabled or continued to be disabled. However, Social Security must make a medical improvement determination based on diagnostic signs or tests, and other medical reports.

7. My doctor won't respond to my requests for information! What should I do?

Information from treating doctors is vitally important to winning these claims. However, physicians are extremely busy professionals and may simply fail to respond to your requests for reports or information because of a lack of time or organization or sufficient staff. Having an experienced attorney is very helpful in this regard. Experienced attorneys will have several strategies to get important documentation from doctors.

8. My state's Disability Determination Service is sending me to a consultative examiner. What is this?

A consultative examiner is an independent doctor that the Social Security Administration has requested examine you in order to determine if you are disabled. A consultative examiner may provide a physical or mental consultative

exam. The SSA often requests consultative exams because your own medical records are not conclusive enough to warrant a determination of disability.

It is important that you comply with the request to see the consultative examiner and cooperate with the exam.

9. I received my Notice of Hearing. What can I expect to happen at the Hearing?

Several things will happen at the Hearing that you should be prepared for. The Judge will first ask basic questions about your personal history including, age, education and work history. The Judge will then ask questions relating to your medical history, treatment and current symptoms and limitations, as well as a description of the daily activities that you routinely engage in. It is important to answer these questions honestly and fully.

A few things to remember for the Hearing: answer the Judge's questions honestly and completely, do not minimize your symptoms but at the same time, there is no need to playact for the Judge by squirming in your chair or otherwise acting in pain if you are not truly in pain. These Judges hear disability claims as a full time job and are knowledgeable about most illnesses and their symptoms. Do not forget that the Judge will take into account your answers and behavior as part of his decision. In general, just as doctors need to provide details so do claimants. Simply saying that you are disabled to work or that you are in pain is not very persuasive. Rather, you want to be able to describe what part of your body is in pain, what kind of pain it is, how often do you have the pain, what is the degree of pain, what makes the pain worse, and how does the pain affect your activities such as standing, walking, sitting, lifting, etc.

After the Judge finishes his questioning, he will give your attorney an opportunity to ask questions. Attorneys should have scheduled a pre-hearing meeting with you to prepare for the hearing.

Once your attorney has finished his questioning of you, the Judge will then ask questions to an expert that Social Security normally pays to be at hearings called a Vocational Expert (VE). The VE is a person certified as an expert in knowing the physical and mental requirements of all jobs, and how many jobs exist in each region of the country. The Judge will ask the VE what, if any, jobs are available for a person with limitations and abilities set forth in hypothetical questions the Judge formulates. After the Judge has asked his questions to the VE, your attorney will have an opportunity to do so as well. Your attorney should ask questions to the VE that are designed to have the VE answer that there are no jobs in the national and local economy that the hypothetical claimant is able to perform.

After the Hearing is completed, you will not necessarily know the Judge's decision. You must wait to receive a written decision by mail

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