

# DISABILITYnews

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## no doubt about it—an appeal is worth the effort

You apply for Social Security disability benefits, wait months to get a decision, and are shocked and disappointed when your claim is denied. You may wonder, "What's the point in appealing?" "Won't my claim just be denied again?" Not necessarily. Despite an initial denial, you may have a good chance of prevailing on appeal. Here's why.

Once the SSA decides that you meet the non-medical requirements for disability benefits, it sends your application to a state agency to evaluate your medical condition. Initial disability determinations are made by agency employees. Appeals, on the other hand, are decided by an administrative law judge after a hearing. There are significant differences between the way disability is evaluated by the state agencies and ALJs. The state agency decision makers, who have only the cold file to review, seldom look beyond the medical findings to consider a claimant's actual ability to work.

### The Advantages of ALJ Hearings

State agency decision makers tend to use Social Security regulations known as the Listing of Impairments as the unstated basis for denying claims, especially for claimants under age 50. If a younger claimant's impairment does not meet a Listing, the state agency is unlikely to find the claimant disabled. But meeting a Listing is only one of two routes to a disability finding. Even if your impairment does not meet or equal a Listing, you will be found disabled if you can't do your past relevant work or other work that exists in substantial numbers in the national economy.

ALJs, on the other hand, get to meet the claimant and hear from him or her in person. They view their role as evaluating the entire case, including

the testimony of the claimant and other witnesses, to determine what work capabilities the claimant still has. ALJs find younger claimants disabled because of inability to perform sedentary work much more often than state agency decision makers do.

### State Agency vs. ALJ Decisions

In 2010, the SSA Office of the Inspector General (OIG) did a study of the differences between state agency decisions and ALJ decisions for certain impairments. For example, ALJs found claimants with back impairments disabled 70% of the time, while the state agency denied 78% of such cases. For claimants under age 50 with back impairments, the state agency found them not disabled 94% of the time while ALJs found them disabled 63% of the time.

The SSA has viewed such differences in results and approach to decision making as a problem. It has taken steps to encourage a unified approach to decision making at all administrative levels. However, disparities remain. So even if you've been denied by the state agency, if you are truly unable to work, you may have a pretty good chance of winning before an ALJ.



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# MEETING THE severity requirement

To qualify for disability benefits, you must have a "medically determinable impairment" and your impairment must be "severe." The purpose of this requirement is to eliminate frivolous cases. These are cases in which the claimant's condition interferes with their ability to work only slightly, if at all, or in which the claimant does not have a genuine medical problem.

A "medically determinable impairment" is an anatomical (body structure), physiological (body function), or psychological (mental) abnormality that can be established by accepted diagnostic techniques. Diagnostic techniques include such things as medical examinations, medical imaging studies, and laboratory tests. Your symptoms, like pain and fatigue, no matter how genuine or how bad, are not by themselves enough to get you benefits. Medical evidence must confirm that something is wrong with you.

As long as a doctor has enough information to make a legitimate diagnosis, you have a medically determinable impairment. Even when doctors disagree about your diagnosis, if medical signs or laboratory findings show that you have any abnormality, you have a medically determinable impairment.

Virtually any reduction in your physical or mental capabilities for work satisfies the requirement that your impairment be severe, as long as the evidence shows you have a medically determinable impairment.

In deciding whether your impairment is severe, the SSA will consider the impact of your symptoms on your ability to work, so long as they stem from a medical or psychological abnormality. The SSA should also consider the combined effect of all your impairments, even minor ones. Close cases should be decided in favor of finding your impairment to be severe.



# MEETING THE duration requirement

Unless your impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of 12 months for you to qualify for benefits. You don't have to wait until you have been unable to work for a whole year to apply for benefits. The SSA will presume that your impairment will meet the duration requirement if it's the type of condition that obviously will last a long time, for example a serious spinal cord injury.

## Impairments That Are Likely to Improve

If you apply for benefits before you have been impaired for 12 months and you have the type of condition that could get better, your claim could be denied. This is often the case for broken bones, which usually heal within a year, although there certainly are exceptions. Alternatively, the initial decision on your claim could be delayed to see if your condition improves.

## Conditions That Come and Go

Suppose you have a type of condition that comes and goes, like fibromyalgia, chronic fatigue syndrome, or migraines. Will it satisfy the duration requirement? The short answer is yes. Conditions that wax and wane or that have short periods of remission can meet the duration requirement. Your condition doesn't need to be at the same level of severity for the entire 12 months. Ultimately, to get benefits, however, you will need to show that the flare-ups of your condition prevent you from holding down a full-time job.

## Back-to-Back Impairments

If you have two completely different impairments, and neither one alone meets the 12-month requirement, can you add them together? Logically, it would seem you should be able to do so. Unfortunately, however, the answer is no. You can't tack together unrelated severe impairments to meet the duration requirement. For example:

The manager of a retail store has a stroke. She is off work for five months. Just as she is cleared for work by her doctor, she falls and injures her knee. Nine months later, after undergoing knee replacement surgery and rehab, she is again cleared for work. She is out of work for a total of 14 months. However, she is, unfortunately, not eligible for Social Security disability benefits because she does not meet the duration requirement.

## When You Are Able to Return to Work

What happens if your condition improves and you are able to go back to work? Once you meet the 12-month duration requirement, you may be eligible for disability benefits for a temporary period if your condition improves enough to allow you to return to work.

# the two routes TO DISABILITY

The Social Security Administration (SSA) uses a five-step sequential process to evaluate whether you are disabled. The process can be a little confusing to follow. Essentially, it provides two alternative routes for proving you are disabled. Either route will lead to a finding that you are disabled. Along these routes are six roadblocks. If you don't have the proof to pass through the roadblock, your claim will be denied. Here's a breakdown of how it works.

## Route #1

The first route to disability requires you to prove that:

1. You are not engaging in substantial gainful activity (i.e., you are not earning more than a minimal amount).
2. You have a severe impairment.
3. Your impairment has lasted or is expected to last for at least 12 continuous months or end in death.
4. Your impairment meets or equals one of the impairments described in the Social Security regulations known as the Listing of Impairments.

## Route #2

The second route to disability requires you to prove that:

1. You are not engaging in substantial gainful activity.
2. You have a severe impairment.
3. Your impairment has lasted or is expected to last for at least 12 continuous months or end in death.
4. You are unable to do your past relevant work (i.e., the easiest job you had in the past 15 years).
5. Considering your age, education and work experience, there is no other work that you can do that exists in the national economy in significant numbers.

June 16 – Father's Day  
July 4 – Independence Day  
August 5 – Civic Holiday

IMPORTANT  
DATES

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## Six Roadblocks

There are six possible roadblocks that will preclude the SSA from deciding you are disabled.

1. You are working at the substantial gainful activity level.
2. You do not have a medically determinable impairment.
3. Your impairment does not significantly limit your physical or mental ability to do basic work activities.
4. Your impairment has not lasted or is not expected to last for 12 continuous months or result in death.
5. You are still capable of doing your past relevant work.
6. You are still capable of other work, given your age, education, and work experience.



# reopening an earlier application

Did you give up on an earlier application for Social Security disability benefits after it was first denied? If the answer is yes, it may be possible for your attorney to reopen the earlier application, which could provide you with significant additional past-due benefits.

## Time Limits for Reopening

Your attorney may request that your prior Social Security disability or SSI case be reopened for any reason within 12 months of the initial denial. For good cause your attorney may request reopening within four years of an initial denial in a Social Security disability case, and within two years in an SSI case. The standards for good cause are the same for both programs. The discovery of new and material evidence is good cause, as is a clerical mistake in the computation of your benefits, or a clear mistake in the way your case was decided.

If your current application alleges the same onset date for your disability as an earlier application, it can be considered as a timely request to reopen the earlier SSD application.

## When No Time Limit Applies

There are also situations where no time limit applies. For example, an application may be reopened at any time if the decision was based on fraud.

There is no time limit for reopening cases involving claimants who don't have the mental capacity to understand the procedures for appealing.

This rule applies when there was no one legally responsible for pursuing the claim such as a parent, legal guardian, attorney or other representative. Regardless of how much time has passed from the time of the initial denial, the case can be reopened.

