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M. Stanley Whitehead

# SOCIAL SECURITY DISABILITY:

## The Complete Guide To Getting Benefits



Written by Marc Whitehead, Esq.

# Introduction

Millions of Americans are suffering from disabling conditions that render them unable to work. The road to approval for Social Security disability benefits can be a long and frustrating one, but with the right assistance, you can greatly increase the chances of getting the financial help you need.

This guide will walk you through what to expect from this process, answer your questions, and teach you how to make the most of every step.

Inside this E-book, you'll find the following sections:

1. Qualifying for SSDI: What You Need To Know
2. Applying for Benefits: The Right Way
3. The Dreaded Denial: What Happens Next?
4. Frequently Asked Questions

# QUALIFYING FOR SSDI:

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## What You Need To Know

The first step to getting benefits is understanding the qualifications you must meet in order to be approved.

The Social Security Administration (SSA) is the federal agency that governs the federal disability benefits system and is responsible for laying out the qualifications and determining which applicants qualify to receive disability assistance.

According to SSA guidelines, there are 2 basic qualifications each applicant must meet in order to be approved:

- The applicant must have enough work credits.
- The applicant's medical condition must meet the SSA's definition of disability.

While this may sound simple enough, the application process is almost never cut-and-dry. To demonstrate why, we'll look at these requirements more in-depth.

### >> *Work Credits*

Work credits are earned by working in a job that is covered by Social Security. Look at your pay stubs -- if you see Social Security taxes taken out each pay period, then you are working in a job that meets that description.

Just having worked at a job covered by Social Security isn't enough to qualify you. You must have worked long enough in such a job to have earned a minimum amount of work credits. Before explaining how many credits you need, it's important to understand how these credits add up.



Social Security work credits are earned based on your yearly wages. Every working person can earn up to 4 credits every year. The amount you'll need to earn to get these credits varies every year, but here's an example based on the 2015 requirements: For every \$1,220 you earn in Social Security covered wages or self-employment income, you will earn 1 credit. Once you have earned \$4,880 in 2015, you have earned all 4 credits you can get for the year.

These credits add up over the course of your working life. The number of credits you'll need to have in order to qualify for disability benefits depends on the age you are when you become disabled.

If you are a younger worker who become disabled, you may not need as many credits as someone who has been working for a lot longer:

- If you are younger than 24 years old, you may need only 6 credits earned in the 3-year period ending when the disability started.
- If you are between 24 and 31 years old, you may qualify with credits for working half the time between age 21 and becoming disabled. As an example, someone who becomes disabled at 27 years old would need credit for 3 years out of the previous 6 years (the time between turning 21 and turning 27 years old). At 4 credits a year, this would equal 12 credits needed to qualify.
- Ages 31 and up can refer to the chart below from the SSA website:

Born after 1929, Became Disabled At Age	Number of Credits You Need
31 through 42	20
44	22
46	24
48	26
50	28
52	30
54	32
56	34
58	36
60	38
62 or older	40

## >> *Meeting the SSA's Definition of Disability*

In addition to meeting the work requirements, you must also demonstrate that your disability meets the Social Security Administration's definition of a disability. Generally, this means that you suffer from a condition that interferes with basic work-related activities and that the condition will prevent you from working for at least a year. The agency provides a list of medical conditions, classified by major body systems, that it may consider to be disabling.

To qualify as disabled, you must suffer from a condition that is on the list or of a condition or combination of conditions that is of the same severity as a medical condition that is on the list. If it's the latter case, the SSA will evaluate whether your condition interferes with your ability to work.

When making this decision, the SSA will not only evaluate whether the condition stops you from being able to do your old job, but whether you would be able to adjust to other work that wouldn't be limited by the condition.

Your medical condition, your age, your education level, your past work experience, and your work skills will be looked at when deciding whether there are other jobs that are available that you would be able to do.

Some conditions are so severe that being diagnosed with them qualifies you for the SSA's expedited Compassionate Allowances program. These conditions, which include illnesses such as Lou Gehrig's disease (ALS) and pancreatic cancer, are seen as so severe that they obviously meet the standard of disability with minimal medical information.

# APPLYING FOR BENEFITS:

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## The Right Way

There are several ways you can apply for disability benefits:

### >> *Online*

To fill out an application on the internet, visit [www. socialsecurity.gov/ applyfordisability/adult.htm](http://www.socialsecurity.gov/applyfordisability/adult.htm). This method can be the easiest if you are comfortable filling out the application without assistance. You avoid wait times and can do it when is convenient for you.

### >> *By Phone*

This method, while it can also be done from the comfort of your living room, doesn't offer quite as much flexibility. You'll need to call the SSA at 800-772-1213 and let them you know want to do a phone application. Then, you'll be assigned a date and approximate time that you can expect a call from someone at the SSA. That person will take your application over the phone, then mail you the application for you to sign and return.

The benefit here is that you don't have to leave your house but still have the benefit of talking to an actual person in case you have questions about any part of the application.

### >> *In Person*

If you prefer to sit down with someone face to face, then you can call the number listed above to schedule an appointment at the closest Social Security Office. When you make the appointment, you'll be given directions to that office and advised on what paperwork you'll need to bring.

### >> *Filling Out The Application*

There are three key parts of the SSDI application that we'd like to highlight: the Disability Report, the Work History Report, and medical sources.

## >> **Disability Report**

The Disability Report, form SSA-3368-F6, is the part of the application where you will explain your disability. The form asks for information such as:

- What are your medical conditions?
- How does your condition limit your ability to work?

When explaining how your medical conditions limit your work ability, the best advice is to keep it simple and honest. Don't just explain why you can't do your current or most recent job, but explain how the condition limits you in performing any other work that you might be qualified for based on your work history, education and training.

## >> **Work History Report**

The Work History Report, form SSA-3369, is what will be used to evaluate your work history for the past 15 years, including the jobs you've held and what tasks you've performed at these jobs. Use as much detail as possible in describing these tasks, and what physical or mental efforts were required to perform them. The more information you provide, the better your application will be.

## >> **Medical Sources**

One of the most important elements of your application will be the documentation you have to support your disability claim from the medical professionals who have treated and evaluated you.

The SSA provides a list of what they call "acceptable medical sources." This means medical professionals that the agency regards as qualified, reputable sources of information for your health issues. They also provide a list of "other medical sources," from whom medical documentation will be given far less weight.

While you should include absolutely every bit of medical documentation you have related to your disability from every source, to have a chance of approval your application MUST include documentation from an "acceptable medical source." This list includes physicians, optometrists (for eye-related conditions), psychologists (for intellectual and learning disabilities) and

psychiatrists (for other mental impairments).

The best medical source to have documentation from will depend on the nature of your condition. For example, if you have been diagnosed with cancer, having documentation from an oncologist would be the ideal source. You should also include documentation from any doctors you saw prior to being treated by an oncologist that lead you to a cancer diagnosis. If your family doctor first diagnosed the cancer before referring you to an oncologist, for example, then you'd want documentation from your family doctor as well.

The SSA will evaluate your medical source's opinion based on these factors:

- How long your treatment relationship with the doctor is.
- How well the doctor knows you and your case.
- How many times you've been treated by the doctor.
- The doctor's area of specialization.
- What type of exams and testing the doctor has performed to reach a diagnosis.
- The quality of your doctor's explanation of your condition.
- The amount of evidence provided by the doctor to support the diagnosis.
- Consistency of the doctor's information with other evidence in your application.

On the list of "other medical sources" are chiropractors, physical therapists, physician's assistants, nurse-practitioners, audiologists, pharmacists and occupational therapists. While reports from "other medical sources" can and should be included if their care was related to the disabling condition, we cannot stress enough the importance of having documentation from a medical doctor.



## >> *Approval of Benefits*

If benefits are approved, there is a five-month waiting period before you can receive benefits. That wait period starts from the time your disability started, though, and not the day the benefits are approved.

When your benefits are approved, the Social Security Administration will give you a date – an established onset date – that it determines your disability began. That decision will be made based on the medical records submitted with your application. After the approval, the SSA will pay you back benefits dating back to the time your disability started, minus the five month waiting period.

This can be a little complicated, but an example can help. Let's assume the Social Security Administration determines that your disability started on Jan. 1, 2014. Your benefits are approved on December 31, 2014. Your five month waiting period is Jan. 1-May 31; you would not receive benefits for those five months. You would be paid back benefits for June 1-Dec. 31, though.



# THE DREADED DENIAL:

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## What Happens Next?

After likely months of waiting for word about the application, nearly two-thirds of applicants will receive the dreaded denial letter from the Social Security Administration. While this is frustrating and can give applicants a feeling of hopelessness, the first thing you must know is that this is NOT the end of the process.

### >> *Why Was My Claim Denied?*

This is the first question a Houston Social Security lawyer usually hears from a panicked new client who has received such a letter. There are many reasons for a denial, including:

- 1. Not understanding qualifications:** It's true that some people who are denied do not actually qualify for these benefits. The complexities of the system often lead people to believe they are eligible for benefits when it simply isn't true. For many denied applicants, though, this is not the case.
- 2. Not having proper medical care:** When patients with long-term medical problems feel defeated by a health care system that seems to keep failing them, they sometimes simply stop going back for treatment. This can hurt you, both from a health standpoint and from a legal one. It's important to continue your medical treatment and follow your doctor's treatment plans. If you feel your condition isn't being treated as well as it could be, get second opinions rather than stopping treatment.
- 3. Not having enough medical documentation:** This can mean that your doctors didn't provide all the records you needed, your medical records may not have been up to date, or the SSA didn't evaluate the evidence properly.
- 4. Found to be able to work:** If your claim is denied because the SSA decides you are able to work, it can be because they have not accurately assessed your limitations and the requirements of your past work or other jobs available.

No matter what the reason for the initial denial, the biggest mistake you can make is not appealing the decision. Many applicants, instead of appealing, will wait and reapply for benefits again later. Appealing is a much better option and greatly improves your chances of having benefits approved.

## >> *The Appeals Process*

The most important thing you will need to know about the appeals process is this: You only have 60 days from the time you receive your denial letter to file an appeal request.

The Social Security Administration guidelines presume that you will have received your letter of denial within 5 days of the date on the letter. So, if the letter is dated March 1, the SSA will assume that you received your letter by March 5. Within 60 days of March 5, you must file your request to appeal the decision.

When you receive your denial letter, it should tell you the reasons that the claim was not approved. The letter will also provide a list of the medical records that were used to make the decision. A Social Security disability attorney will be able to use the information in this letter to identify what type of evidence is needed during the appeal to have your claim approved.

## >> *Levels of Appeal*

The appeals process has 4 levels. If you are denied at the first level, you can move on to the next level, and so on. Here are the different stages of appealing your disability denial:

### *Reconsideration*

The first level involves a complete review of your case by someone who was not involved in the initial decision. All the original application documents will be reviewed, and you can submit new evidence to be considered as well. During reconsideration, the applicant does not need to be present.

## *Hearing*

If a reconsideration still results in denial, then the next step is requesting a hearing by an administrative law judge. Hearings will usually be scheduled within 75 miles of your home; in some cases, they may be done by video conference.

In most parts of the country, it can take up to a year to get your hearing scheduled. For most people, there is no way to speed this process up, but there are 2 exceptions:

- 1. Filing a critical case request.** This request is for the most serious claims. To have this request granted, the applicant must generally be suffering from a terminal illness or have dire need. Dire need typically means the applicant is unable to obtain food, medicine or shelter.
- 2. Requesting an On the Record Decision.** This asks the SSA to grant your benefits “on the record” (OTR) without a hearing. If you request an OTR decision and are denied, your case will go back in line for scheduling a hearing. This option should only be considered when the evidence strongly supports an approval and the medical evidence is up to date.

The judge who is assigned to your hearing will let you know when and where it is scheduled. For the hearing, additional evidence may be requested, and you are allowed to call witnesses, such as medical and work experts, and family members.

A Social Security lawyer can help you prepare for and present your case at the hearing. The judge will make a decision based on all the information related to your claim, including everything from your application and any new evidence you present.

## *Appeals Council*

If the hearing still ends in a denial of benefits, the next step is deciding to request a review by the Social Security Administration’s Appeals Council. This council can review the case, return it to a judge for another review, or deny the request if it finds the judge’s ruling to be correct.

### *Federal Court*

If your claim is denied through the first three levels of appeal, the final step is filing a lawsuit in federal court to have your case re-examined. This is not a decision that should be taken lightly and should not be attempted without help from an experienced disability attorney.

# **SOCIAL SECURITY DISABILITY:**

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## Frequently Asked Questions

### **>> *How can a disability lawyer help me?***

Social Security disability attorneys essentially help applicants to analyze their claim and determine what is needed to win an approval. An attorney can help gather evidence, present it in the most favorable way, and help you work through the stages of appeal, if needed.

What do I need to bring to my first appointment with a disability attorney? During your first meeting, it will be helpful to your attorney if you bring the following information:

- Medical records
- List of medications
- Contact information for your doctors
- Employment information - both current and past jobs
- Social Security paperwork - initial application and denial letter, if applicable
- Workers' compensation information, if applicable

This and any other documentation you feel might be important will help your first meeting be as productive and informative for you as possible.

### **>> *What is an appeals hearing like?***

Some applicants are nervous about having a hearing in front of an administrative judge. While the hearing is a serious matter, it's not a scary place that you should fear. This is the place where you get to tell your story to an actual person, not just writing information down on a piece of paper.

The hearing is a private event, held in a small conference room. It will likely

last about an hour. You'll be asked about your education, work experience, job training, medical conditions and symptoms, and how your condition limits your daily activities.

Your attorney will prepare you for this and go through all the information you'll need to discuss so that you feel confident and at ease during the process.

## **>> *What if I didn't file my appeal on time?***

As discussed in the appeals section of this book, you have 65 days from the date of your denial letter (this includes the 5 days that the SSA assumes it will take you to receive your letter). If you haven't filed an appeal within those 65 days, you will be required to start over with a new application.

We strongly encourage you to request an appeal within the time frame. If you don't, and your second claim is later approved, you may not be able to receive benefits dating back to the time of your first application.

## **>> *What is the difference between SSDI and SSI benefits?***

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) are benefits programs managed by the Social Security Administration. The programs are very different.

SSDI are disability benefits funded through payroll taxes. This income is available only to disabled people who have earned a certain amount of work credits.

SSI is a benefit program available to low-income Americans. Being approved for benefits is based entirely on financial need and is not just for those who have a disability. SSI beneficiaries do not have to meet a work credit requirement. Generally, to qualify for SSI benefits, you cannot earn more than \$733 a month for individuals and \$1,100 a month for couples.



## **Marc Stanley Whitehead, Esq.**

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Long Term Disability & ERISA Bad Faith Insurance · Social Security Disability SSI Disability · Veterans Disability

Disability attorney Marc Stanley Whitehead, Esq. is the founding partner of Marc Whitehead & Associates, which he established in 1992 in Houston, Texas. Born on November 24, 1966 in Memphis, Tennessee, Marc was raised in Normangee, Texas and graduated in 1985 from Normangee High School as class valedictorian.

Marc attended Texas A&M University where he graduated in 1989 with a Bachelors of Business Administration in Finance. Marc attended the University of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992 and is admitted to practice before all U.S. District Courts in Texas, the United States Court of Appeals for Veterans Claims and the United States Court of Appeals-Fifth Circuit.

Marc Whitehead served as President of the Houston Trial Lawyers Association (2009-2010), is a member of the Board of Directors of the Texas Trial Lawyers Association, and a member of the American Association of Justice.

Marc is also a member of the Texas Aggie Bar Association, the Texas Association of Civil Trial and Appellate Specialists and the Houston Volunteer Lawyers Association. Marc Whitehead is a Past Chairman of the Houston Bar Association Social Security Section and is a frequent lecturer on the topic of Social Security and Disability Law.

### ***Professional Experience***

Marc Whitehead & Associates LLP, Founder  
Specializing in plaintiff's personal injury litigation, insurance & ERISA litigation, Social Security Disability law, Veterans disability compensation, probate and commercial litigation.

Adjunct Professor of Law  
University of Houston Law Center  
Civil Trial Advocacy



Instructor  
National Institute of Trial Advocacy  
Civil Trial Advocacy

Instructor  
National Business Institute  
Social Security Disability

## ***Board Certified***

Personal Injury Trial Law Texas Board of Legal Specialization

Social Security Disability Law National Board of Social Security Disability  
Advocacy

## ***Professional Accreditations and Honors***

Accredited Veterans Claim Attorney, Department of Veterans Affairs

AV Preeminent Rated by Martindale Hubble

Named to "Houston's Top Lawyer" List (2008, 09 & 10) by H Texas Magazine

Named to "Houston's Top 100 Professionals" List (2010) by H Texas Magazine

## ***Educational Experience***

J.D. University of Houston Law Center, 1992  
Top Quarter of Graduating Class

B.B.A. in Finance, Texas A&M University  
1989 President's List

Valedictorian, Normangee High School 1985

## ***Admitted to Practice***

State Bar of Texas

U.S. District Courts, All Texas Districts

United States Court of Appeals for Veterans Claims

United States Court of Appeals-Fifth Circuit

## ***Professional Activities and Associations***

President – Houston Trial Lawyers Association (2009-2010)

Board of Directors – Houston Trial Lawyers Association

Board of Directors – Texas Trial Lawyers Association

Texas Trial Lawyers Board of Advocates (1999-2001)

HBA Social Security Section Chairman (2004-2005)

Member:

Association of Civil Trial and Appellate Specialists

National Organization of Social Security Claims Representatives

American Association of Justice Texas Aggie Bar Association

Houston Volunteer Lawyers Association

College of the State Bar of Texas

Houston Bar Association