



Legal Aid Society of Hawai`i

SSI/SSDI: How to Prepare For Your Hearing

This information is useful if you are appealing a decision made by the Social Security Administration. This brochure will provide you with general information on how to prepare for your administrative hearing.

NOTE: If you are preparing for an administrative hearing for your DHS benefits (including AFDC/TANF/PONO, GA, AABD, Food Stamps, or Quest), this brochure is not appropriate for your situation. Call Legal Aid for more information or visit us on the Web <http://legalaidhawaii.org>

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I. Prepare Before the Hearing

A. Finding Representation

- Anyone can represent you at the hearing: friend, lawyer, yourself.
- Private attorneys can request up to 25% of any retroactive benefits you receive. Any fee must be approved first by SSA. To find a private attorney you can call the Lawyer Referral Service at 537-9140 (neighbor islands call collect), Volunteer Legal Services (previously called Hawai'i Lawyers Care) at 528-7046 (1-800-839-5200), or look in the yellow pages.

B. How to Prepare

1. Make sure you are eligible.

- For SSI: You must have limited income and resources AND you must be either (1) 65 years or older; (2) blind; or (3) disabled.

"Blind" -20/200 in best eye after correction or a severely limited visual field.

"Disabled" means that you have been or will be unable to work for no less than twelve months because of a medically-determined physical or mental impairment. It also means you are unable to work at ANY job that exists in the national economy because of your age, work experience, and/or education level.

- For SSDI: You must have an adequate work history, AND you must be either (1) blind; or (2) disabled.

2. Prepare your defense.

- Look at the denial notice. It states the reasons why you have been determined to be not disabled. You should be prepared to defend those reasons to the judge, with additional doctors reports to challenge the reason given, or other available information
- Review your SSA File. You may review your file once a hearing date is set. Once you are notified of a hearing date, contact SSA. If you are on Oahu, call the Hearings office at 541-2915. If you live on Maui or Kauai, you may walk in to your local SSA district office and request to see your file. The Hearings office will send your file to your local office approximately 3 weeks ahead of your hearing. If you are on the Big Island, please call 933-5054 to make an appointment.
- Complete your file. Medical records are the most important part of your case. If any doctors who have treated you submitted inaccurate reports, or if any are

missing, or if the records are more than 3 months old, call the doctors to get new reports and/or current records of treatment. Other records that can be important are reports from vocational rehabilitation, social workers, and drug rehabilitation programs. You are able to submit evidence all the way up until the date of the hearing. (although the judge likes the records 48 hours ahead of time) If you have important records that you cannot obtain in time, you can make a request at the time of the hearing for extra time to submit them after the hearing.

II. At the Hearing.

A. Testifying

- Your testimony as to the severity of your condition, your inability to work or to return to past relevant work, will be critical. The judge will assess what you are saying, and make a determination whether you are telling the truth. The medical records must support that you have the problems you say you have.
- The judge must first determine that you are not engaging in substantial work activity, your disability is severe, and that you cannot return to past relevant work.
- The judge will ask you questions about what you are and are not able to do. You should listen to the questions carefully and answer only the question that was asked.
- After the judge questions you, he will ask you if there is anything more you want to say. This is your opportunity to tell him how your illness prevents you from being able to work. Write yourself a list of things to say before you go to the hearing so you don't forget what you want to say. You can even read a statement to the judge, if it is more comfortable for you to do it that way.

B. Witnesses and Proof

- You have the right to have witnesses present to testify on your behalf (examples of possible witnesses: former employer, friend, landlord, etc.). If a witness cannot be present, s/he can submit a written statement. The kinds of things that are helpful for a witness to say have to do with your physical and/or mental limitations or your pain, which the witness has observed first hand.
- If the judge agrees you cannot return to your past work, the SSA must prove that there is other work you can perform. A vocational expert may be at the hearing to tell the judge, based on your file and testimony, whether there is any job in the national economy you could do, given your age, education, and work history.

- You can ask the vocational expert questions too. For example, if he says given your age, education, work history, and illness, you could be a receptionist, but you also have hearing problems, you can ask “Can I be a receptionist if I cannot hear?”

III. After the Hearing

- The judge will usually make his decision after the hearing and you will get a written decision in the mail. Sometimes, the judge will tell you his decision at the hearing, BUT the final decision is the one you receive in the mail. It may take close to three months to get your hearing decision. The judge has no deadline to make a decision and may take as long as he or she feels is necessary to make a decision

IF YOU WIN

- Social Security Administration (SSA) will process your claim, and it may take another couple of months before you start to receive benefits or get the benefits you were supposed to be getting. If you are approved for SSI, the Social Security office may calculate a back payment, dating back to the date of your application, or the date determined to be your onset date, whichever is more recent. If you are approved for SSDI, your back payment will be calculated from the date 5 months after your onset date, up to a maximum of 12 months prior to your application date. In some situations, SSA will open up an earlier application you may have, and award back benefits using that application date.
- If you are on General Assistance and you signed a loan agreement to receive welfare assistance, DHS will get reimbursed for payments to you. Sometimes the back payment is sent to DHS, and they must pay you the balance due to you within 10 working days. Sometimes SSA divides the payment into two checks, and sends one to you and one to DHS.

IF YOU LOSE

- Your benefits will be reduced to whatever SSA decided in your first notice.
- If you were getting payment continuance, your payment continuance will stop at this point. You will have to pay back any benefits that you were not entitled to during the appeal process. When you get your hearing decision, you will also receive a notice telling you what your appeal options are.
- If you want to continue the appeal process, you can appeal to the Appeals Council within 60 + 5 calendar days from the date on the notice. (SSA assumes that you get the notice 5 days after the mailing date so you actually have a total of 65 calendar days from the mailing date on the notice.) Call the Social Security office for the forms. Legal Aid will not be able to represent you in this matter; but you can call us back for information. The form you need is called a “Request for Review of Hearing Decision/Order” (HA-520-U5).

Remember, you will not get any Payment Continuance after the judge's decision from the administrative hearing.

APPEALING TO THE APPEALS COUNCIL

- If you win, and the Appeals Council decides that SSA's action against you was wrong, your denial, termination, or reduction may be overturned.
- If you lose, and the Appeals Council decides that SSA was right, SSA's decision to deny, terminate, or reduce your benefits will remain in effect. You can continue the appeal process by appealing in Federal District Court. However, this process is difficult to do on your own and you should seek assistance from a private attorney. You can also reapply for benefits at any time in the appeal process with the Appeals Council or federal court.