

The Social Security Application Process and Appeals

The Social Security Process. Attorney Robert Gruber represents adults and children in SSDI, SSI, Widows/ Widowers, and Disabled Veterans seeking Social Security disability at all levels of the Social Security program, from the initial application through an appeal to United States District Court.

Initial Application. The process begins by filing an *Application for Disability*. You can file an application by:

1. Calling Social Security at 1-800-772-1213 from 7 AM to 7 PM, Monday through Friday.
2. Going to one of the area District or Field offices of Social Security.
3. SSDI applications can be filed online at <http://www.socialsecurity.gov>. I can help you with your online application and the completion of the other related documents. SSI applications currently cannot be filed online.

Social Security and the Colorado Disability Determination Services ("DDS") will then develop your case, by obtaining your medical records, asking you to complete forms regarding your daily activities, pain, medications, work history and forms specific to your disability. DDS may schedule an examination for you with a doctor.

You should answer these forms, honestly, completely and quickly. While Social Security/DDS is waiting for your answers they are not working on your case. Very few questions can be answered with a simple yes or no, Such as can you still cook? You may be unable to stand, use your hands to chop, etc. All of these details need to be included in your answers.

There is an urban legend that you have to be denied several times before Social Security will grant you benefits. This legend is **FALSE** and if you are denied, you should immediately pursue an appeal by filing a Request for a Hearing before an Administrative Law Judge. You should save the envelope in which the denial was mailed to you. Many times the date the denial was mailed is later than the date stamped on your denial letter.

You will have 60 days (+5 days for mailing) to file your appeal, but you should file your appeal immediately.

If you need help filing the appeal you should telephone me and I will set up an appointment so that we can immediately file your request online for a hearing and prepare the related documents.

Reconsideration. For disability benefits Social Security in Colorado does not use the Reconsideration step.

Request for Hearing before an Administrative Law Judge. At this step a hearing is conducted before a Social Security Administrative Law Judge at the Office of Disability Adjudication and Review (“ODAR”). In Colorado we have two ODAR offices, one in Denver and the other in Colorado Springs.

The Denver ODAR office is located at:

1244 Speer Blvd, Suite 752
Denver, CO 80204-3500
(888) 383-8889

The Colorado Springs ODAR office is located at:

121 S Tejon, Suite 701
Colorado Springs, CO 80903
(866) 783-8815

The Social Security judge's review of your case is a *de novo* review. This means that the judge is not bound by the prior Social Security initial denial.

Your best chance of obtaining Social Security disability is at this hearing step. It is essential that you have a knowledgeable and experienced attorney assist you at this step.

I am one of only a very few private attorneys who are permitted to have online access to my clients Social Security claims file.

At the hearing, the judge will evaluate your case in what Social Security calls a sequential evaluation process. The judge may have a medical expert and or a vocational expert at the hearing to assist him/her with the evaluation of your case.

This process consists of five steps:

1. Currently working. Are you engaged in substantial gainful activity (“SGA”)? For 2011 this means part or full time work earning \$1,000 per month gross before anything is taken out for taxes. There are different rules for the self employed 20 C.F.R. § 404.1575.

If you are currently engaged in SGA, then your claim will be denied.

2. Severe impairment. Do you have a ‘severe’ impairment or combination of ‘severe’ impairments? 20 C.F.R. § 404.1521, SSR 96-3p.

If you do not have a severe impairment or a combination of severe impairments, then your claim will be denied.

3. Listings. Do you have an impairment that *'meets'* or *'equals'* one of the listed impairments that the Social Security regulations regard as so severe as to preclude substantial gainful activity? 20 C.F.R. Part 404, Subpart P, Appendix 1.

It is not enough to suffer from a disease like Cancer, Osteoarthritis, Degenerative Disc Disease, Bipolar, PTSD, or a Schizoaffective disorder. Social Security has very specific requirements for evaluating you under the Listings.

4. Past work. Can you still perform your past relevant work ("PRW") employment? This is work that you performed in the last 15 years prior to the hearing date.

At this fourth step the judge determines your Residual Functional Capacity ("RFC"), which is defined as the most that you can physically or mentally do despite your limitations. 20 C.F.R. § 404.1545.

It is your burden of proof at this fourth step to prove that you do not have the ability to perform your past relevant work.

If the judge determines that you are able to return to your past relevant work, even though no one will hire you and even though the job no longer exists (such as an elevator operator), then your claim will be denied

5. Other work. Can you perform any work which exists in significant numbers in the national economy?

At this step, the judge will take into account your age, education, and past relevant work experience.

If the judge finds that there is other work that you can perform, then your claim will be denied. There is no concern that the hypothetical job pays only minimum-wage, is a job you have never performed before, a job that you have already applied for and not been hired, or the job is one that you do not wish to perform.

If you are denied, you are permitted to file an appeal to the Social Security Appeals Council. You should save the envelope that the ODAR denial/partially favorable decision came in. Many times the date the denial was mailed is later than the date stamped on your denial letter.

You will have 60 days (+5 days for mailing) to file your appeal, but you should file your appeal immediately.

Appeal to the Appeals Council. If your claim is denied at the hearing level you are permitted to file an appeal to the Appeals Council ("AC"). The appeal is accomplished by completing and sending a "Request for Review of Hearing Decision/Order" Social Security form HA-520, by certified mail to the Appeals Council at

Office of Hearings and Appeals, SSA
5107 Leesburg Pike
Falls Church, VA 22041-3255.

In order to win at the Appeals Council level, you must establish that the Social Security judge either made errors in his findings of fact or improperly applied the law to your claims.

If you are denied at the Appeals Council you are permitted to file an appeal to the Federal District Court for Colorado.

You should save the envelope that the Appeals Council denial came in. Many times the date the denial was mailed is later than the date stamped on your denial letter.

You will have 60 days (+5 days for mailing) to file your appeal to the Federal District Court, but you should file your appeal immediately.

Federal District Court. If your claim is denied at the Appeals Council level you have now exhausted all of your administrative remedies and you are permitted to appeal your case to a federal district judge.

Please note. That Attorney Robert Gruber's website should not be understood to be legal advice. Social Security Law is extremely technical, and in order to convey a general understanding of the Social Security process not all of the details that might impact your case could be included.