



Social Insecurity

What To Expect When You're Applying And How To Protect Yourself From An Unfavorable Decision

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INTRODUCTION

Navigating the Social Security bureaucracy can be a long and confusing process. Don't do it alone.

This office accepts cases involving both mental and physical disabilities. Mental disabilities are "hidden" disabilities. They are often not taken seriously by the Social Security Administration. Yet, you can win if you have a disabling mental impairment. Anxiety and depression are real illnesses. If they stop you from working, you should not hesitate to call Zimberlin Law, LLC. It is important for Zimberlin Law, LLC to be involved early in your case, to prevent mistakes from being made which could lead to an unfair denial.

1) What Is Social Security?

Social Security is a federally funded program. The funds come from everyone's paycheck. If you look closely at your last paycheck, you will notice a percentage of your check is deducted because of the Federal Insurance Contributions Act, commonly referred to as FICA. Money paid out in Social Security benefits is about 24% of all government spending. In 2014, over 890 billion dollars was spent on nearly 66 million recipients. This number includes retired persons.

The earliest known type of social security dates back to the ancient Greeks. They would stockpile olive oil, because it is nutritious and could be stored for long periods. The American system that we know today was molded from the stock market crash of 1929. Unemployment reached 25% and the stock market lost 40% of its value.

Many different plans were proposed to pull America out of the Great Depression including a "share the wealth" program that would confiscate wealth from the privileged and distribute the funds to the economically disadvantaged. This plan included a cap on assets a person could hold. Another plan would give \$200 a month to everyone over 60 years old if the person was retired, their past life was free from habitual criminality, and the money had to be spent within the U.S. by the pensioner within 30 days of receipt.

Another plan was proposed by Charles E. Coughlin which included the deliberate inflation of the currency and the nationalization of all banks. Coughlin was arguably the most influential person of the 1930's. He was a radio personality with over thirty million listeners. His program received ten-thousand letters per day.

There was also a do nothing approach that was proposed. Many politicians felt the ebb and flow of the market was natural and with time the economy would rise on its own. As enticing as this approach sounds, it was not adopted.

President Roosevelt eventually created the current system to pull America out of the Great Depression. Congress ratified his bill as part of the "New Deal." The overall goal of the original bill was to reduce poverty levels among senior citizens. Over the years Social Security has expanded into what it is today.

When most people think of Social Security, they think of retirement benefits. Age 62 is the earliest age a person is able to start receiving retirement benefits. While this is true, Social Security includes much more. The other five main areas include, Social Security Disability Insurance (SSD), Supplemental Security Income (SSI), Disabled Widow/Widower, Disabled Adult Child, and finally SSI children.

1.1) Social Security Disability (SSD)

“SSD” or “DIB” refers to a worker who becomes disabled before reaching the full age of retirement. This happens to about 3 out of every 10 workers. Social Security pays benefits to people who cannot work because they have a serious medical condition that is expected to last at least one year or result in death. For a person to collect SSD, they must have a good work history. For most people that means they must have worked five out of the past ten years. Younger people do not need as many work credits to be eligible. SSD is a type of insurance. A worker pays into the system when they are receiving a paycheck. When they become disabled, they can receive monthly disability benefits.

If you have been working, you have a date last insured (DLI). Each year a person can earn up to four credits. These credits accumulate and protect you in the future in case you become disabled. You can find out your DLI by calling Social Security. If you did not become disabled until after your DLI, then you are not eligible for SSD benefits. You still may be eligible for SSI or Disabled Adult Child benefits.

Your medical condition must significantly limit your ability to do basic work activities such as walking, sitting, lifting or paying attention. Your condition must also prevent you from being able to do your past work. Social Security will evaluate your medical condition, your age, education, past work experience and any skills you may have that could be used to do other work. If you are disabled with a good work history and cannot work, then you are eligible for SSD benefits.

1.2) Supplemental Security Income (SSI)

SSI uses the same medical standard for deciding if a person is disabled, however SSI is for people without good work histories. SSI is a needs based system. People are eligible if their assets and income are below a certain level. SSI is also funded differently. As stated above, SSD comes from the FICA section of your paycheck. SSI is funded by the U.S. Treasury--personal income taxes, corporate and other taxes. In general, you cannot have more than two thousand dollars' worth of assets. Some assets like a home, life insurance policies, car (usually), and burial plots do not count as assets against you. Your SSI benefits may be reduced by as much as one third if you receive housing or food from other people without a loan agreement. Gifts or earnings will result in reduction in SSI benefits. There is more on the one-third reduction rule in Chapter 7 of this book. Married persons should also take notice that a spouse's income will be deemed to be their income and thus they may not be eligible for SSI.

1.3) Disabled Widow/Widower

If a worker who is covered by Social Security dies, a surviving spouse may be able to receive benefits if they are disabled.

The surviving spouse must be at least 50 and have become disabled no later than seven years after whichever of the following occurs last:

- 1) Death of the wage earner upon whose account the claim is based,
- 2) The last payment of mother's or father's benefits to the claimant on the wage earner's account, or
- 3) The last prior payment of disabled widow or widower benefits to the claimant on the wage earner's account.

In most cases, this means that if you become disabled within seven years of the death of your spouse you may be eligible for benefits. A survivor automatically qualifies at 60 years old regardless of whether he or she is disabled or not.

1.4) Disabled Adult Child/Child Disability Benefits

This refers to a person who became disabled before their twenty-second birthday. A claimant will draw benefits off their mother's or father's work history. This benefit comes from FICA payments. The parents must be deceased or collecting Social Security disability or retirement benefits. It is not necessary that the adult child ever worked. Benefits are paid based on the parent's earnings record. If the parent has never worked, the child is not eligible to claim benefits as a disabled adult child; however he or she may be eligible under different criteria such as SSI or SSD.

2) Am I Disabled?

How do I know if I am disabled? Social Security uses a five-step process in determining if you are disabled. This process is used for everyone all the way from Alaska to Maine. If your condition matches a listing in question 3, you can stop and claim disability without going on to question 4 or 5. The listings have high standards of disability and are difficult to meet.

Social Security's definition of disability requires that,

- You cannot do work that you did in the last 15 years;
- You cannot adjust to other work because of your medical condition(s); and

- Your disability has lasted or is expected to last for at least one year or to result in death.

Question 1- Are you working?

Answer: No → Move down to question 2

Answer: Yes → Are you making more than \$1,090 a month?

Answer No → Move to question 2

Answer Yes → As a general rule you are barred from receiving disability benefits.

The \$1,090 reflects the 2015 substantial gainful activity amount (SGA). This amount changes every year with inflation. During the economy stagnation from 2009-2011 the SGA did not increase. If you are blind then the amount is greater. In 2015, the SGA for a blind person was \$1,820. If you make below SGA you are eligible for benefits.

Off the books income still counts as income. Off the books income includes obtaining income by using nefarious means including stealing and dealing drugs.

Question 2- Is your condition severe?

Let's face it, everyone is a little disabled. We all have achy backs or achy feet from time to time. Social Security requires that your condition be severe. What is considered severe? The key is that your condition must interfere with basic work-related activities. A condition like hypertension – although medically serious - may not limit your ability to work at all.

Question 3- Is your condition found in the list of disabling conditions?

Below is a website, which insiders call “the Listing.” The Listing separates medical issues into twelve major medical areas. The twelve areas are, Musculoskeletal System, Special Senses and Speech, Respiratory System, Cardiovascular System, Digestive System, Genitourinary Disorders, Hematological Disorders, Skin Disorders, Endocrine Disorders, Congenital Disorders that Affect, Multiple Body Systems, Neurological, Mental Disorders, Cancer (malignant neoplastic diseases), and Immune System Disorders.

<http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>

Even if your impairment is not listed on the website, Social Security will decide if your condition is of equal severity to a medical condition that is on the list.

If the severity of your condition meets or is equal to the severity of a listed condition, then you will be found disabled.

Question 4- Can you do the work you previously did within the past 15 years?

During your initial interview with a lawyer, the lawyer will ask questions as to your previous employment. The lawyer will want to know where you worked, how long you worked there, the maximum amount you had to lift, how long you were on your feet, and how long you needed to sit, in order to perform your old job, the mental requirements of your job, etc.

Social Security will look at a number of factors including

- Main responsibilities of your job(s)
- Main tasks you performed
- Dates you worked (month and year)
- Number of hours a day you worked
- Rate of pay you received
- Tools, machinery and equipment you used
- Knowledge, skills and abilities your work required
- Extent of supervision you had
- Amount of independent judgment you used
- Objects you had to lift and carry and how much they weighed
- How much you had to sit, stand, walk, climb, stoop, kneel, crouch, crawl, balance
- How you used your hands, arms and legs
- Speaking, hearing and vision requirements of your job(s)
- Environmental conditions of your workplace(s)

If you cannot possibly do any type of work you did in the last fifteen years due to your current disability, then move on to question 5.

Question 5- Can you do any other type of work?

Social Security may have a vocational expert at the hearing to help the Judge decide whether there are jobs in the economy that you can do with your present impairments. The judge will take into account your age, education level, ability to speak English, and the transferability of your skills (if any) when deciding if you can do any other job. The rules change as you get older. Social Security also uses a "Grid" to help determine whether there are other jobs in the economy that you can do. The older you are the more likely you are to be disabled on the grid. Below is the grid rule for people of advanced age regarding sedentary work.

GRIDs for Sedentary Work

<u>Rule</u>	<u>Age</u>	<u>Education</u>	<u>Previous Work Experience</u>	<u>Decision</u>
201.01	Advanced Age	Limited or less	Unskilled or none	Disabled
201.02	Advanced Age	Limited or less	Skilled or semiskilled- skills not transferable	Disabled
201.03	Advanced Age	Limited or less	Skilled or semiskilled- skills transferable	Not disabled
201.04	Advanced Age	High school graduate or more- does not provide for direct entry into skilled work	Unskilled or none	Disabled
201.05	Advanced Age	High school graduate or more- provides for direct entry into skilled work	Unskilled or none	Not disabled
201.06	Advanced Age	High school graduate or more- does not provide for direct entry into skilled work	Skilled or semiskilled- skills not transferable	Disabled
201.07	Advanced Age	High school graduate or more- does not provide for direct entry into skilled work	Skilled or semiskilled- skills transferable	Not disabled
201.08	Advanced Age	High school graduate or more- provides for direct entry into skilled work	Skilled or semiskilled- skills not transferable	Not disabled

3) What Happens When I Call An Attorney?

The first question is, when should I call an attorney? Some attorneys do not take cases until a claimant has been denied twice, and is ready to file for a hearing. Zimberlin Law, LLC takes cases right from the start. If you are still working, we will see you before you file for disability to help you decide if you might possibly qualify for benefits. We believe that if we get involved early in the process, we can help prevent you from making mistakes which might hurt your claim.

When you first call a Social Security lawyer the odds are you will be asked a series of questions. Questions will typically include;

- How old are you?
- When did you last work?
- What is your prior work experience?
- What are your impairments?
 - List all of them and include the severity of your impairment
 - Height/Weight
- Do you have any history of drug or alcohol use?
- Who are your current doctors?
- How many children under the age of 19?
- What is the status of your claim, if you have started one?
- How old were you when you became disabled?
- Do you have medical insurance?
- If applying for SSI, what is your spouse's income and source?
- If you are applying for SSI, what are your living arrangements?

It is important to fully answer all the questions. There is a full sample intake form at the end of the book.

Your first contact with a law firm will likely be by telephone. It may feel awkward and probably embarrassing when the person on the other side of the phone is asking intimate questions about your mental and physical health. This is not a time to hold back.

Drugs and Alcohol

Social Security will not pay benefits if drugs or alcohol are a material factor in your disability. You should stop all substance abuse use if you want to win your case. If you have had a problem with substance abuse, it is important to disclose this to the attorney the first time you call.

4) What Happens When I Meet With An Attorney?

After your phone interview answering basic questions, the attorney may schedule an appointment with you, or may ask you to send in medical records first. The attorney may want your doctor to fill out forms. A personal meeting with the attorney at the start of a case is important. The attorney will explain the process and address any legal problems you may have in your case.

At this meeting, the attorney will inquire about all of your ailments and how your disabilities restrict you from working full-time. The attorney will also ask questions about your mental limitations. It is important let the attorney know exactly what is stopping you from working.

The attorney will estimate the time it will take you to go through the process. There are many delays built into the process. You must be prepared for a long wait for Social Security to decide your case.

What to bring?

When you meet with the attorney it is good to bring every piece of paper you have received from Social Security. This will make it easier for the attorney to see where you are in the claims process and why your previous attempts to obtain benefits have failed.

Bring medical records if you have them. If you have received worker's compensation benefits recently, bring in documents that show the amount of your benefits, and when they started and ended.

Bring a list of all employers from the past 15 years with dates. The exact start and stop date for every job is not necessary, however approximate years of employment are helpful.

Attorney fee

The attorney will discuss the fee at the first meeting. While many types of fee arrangements are possible, the typical fee is contingent on you winning the claim. That means that there is no fee unless you win. The typical arrangement is 25% of the back payments with a \$6,000 cap, if you win at the hearing level or earlier. The cap is adjusted upwards from time to time. Social Security must approve all fees.

Here is an example of the attorney's fee in action:

Let's say you became disabled on 1/1/2013 and that is also the date you stopped going to work. There is a five month waiting period for SSD. The first month of benefits would be June 2013. Let's say you are granted in January 2014 and are entitled to \$1,000 per month from June through November. You are entitled to six months of back benefits, for a total of \$6,000.00. Your lawyer will receive 25% of the lump sum payment you receive, which is \$1,500.00. The lawyer does not receive any of your future benefits.

The attorney fee is usually automatically withheld from the first lump sum payment you are set to receive. Social Security will send out two checks; one to your lawyer and one to you. Social Security does not pay for expenses, such as costs of medical records and reports, postage, etc.

5) What Is The Claims Process?

5.1) Initial Application

Initial claims for disability can be made online at <http://www.socialsecurity.gov/>. The initial questionnaire will ask you general questions about yourself including; age, Social Security number, etc. You can also apply in person or by telephone. Zimmerlin Law, LLC will help you in the application process.

After you apply, SS will forward your request for benefits to the Disability Determination Services (DDS) office of your state. DDS will ask you to provide them with all of your medical information relevant to your claim. You will need to give them names of your doctors.

The state agency may schedule a consultative exam (CE) with one of its doctors to determine if you are disabled. If you have your own treating doctor, you can ask DDS to schedule the exam with your doctor.

Doctors and disability specialists at DDS will evaluate your entire file and make a decision as to whether you are disabled.

If you are approved, a letter will be mailed to you with the amount you will receive in benefits and a date payments will start. If you are denied benefits, a letter will be mailed to you with reasons why you were denied. It is extremely important that you keep every piece of paper the Social Security office sends you.

Estimated time for a decision: 3-6 months
Time allowed to file an appeal: 60 days

5.2) Reconsideration

If you are denied, either you or your attorney will then have to send in a request for reconsideration. The request for reconsideration can also be completed through the SSA website and the process is similar to the initial filing. You only have sixty days to file for reconsideration after the initial claim is denied. Do not miss this time limit. During the reconsideration phase DDS may or may not schedule another CE.

Estimated time for a decision: 3-6 months
Time allowed to file request for a hearing: 60 days

5.3) Hearing

If the reconsideration is denied, and you still do not have an attorney, now is the time to get one. The next step of the process involves a hearing in front of a judge. The judge's

job is to be fair to the claimant and grant benefits if the person is truly disabled. They also have a duty to not burden the general taxpayer with paying for non-disabled people. The system in most states is backlogged. It may take well over a year from the time you request a hearing to the time you are actually sitting in front of a judge. Your lawyer will be able to estimate the time it takes to get a hearing in your area.

At the hearing, the ALJ will likely bring in a Vocational Expert (VE). The VE will testify as to whether or not there is a job in the economy that someone with similar impairments as yourself can do on a full-time basis.

If you lose at the hearing, you can appeal to the Appeals Council, then Federal District Court, and then the Federal Circuit Court. There is more on what will happen during the hearing in Chapter 6.

Estimated time for a decision: 2-3 months after the hearing
Time allowed to appeal to the Appeals Council: 60 days

5.4) Appeals Council

If you are denied at the hearing level, the next step is go is to the Appeals Council, which is located in Falls Church, VA. There is a sixty-day period from the ALJ notice of denial to the file with the Appeals Council. It usually takes about eighteen months until the Appeals Council will decide your case. You will not have to travel to Falls Church, VA. Your attorney may write a brief explaining why the ALJ was incorrect. The Council will look at the medical files, the brief which was filed by the attorney, and the ALJ decision.

5.5) Federal District Court

If the Appeals Council denies your claim, you can appeal to Federal District Court.

If you bring a civil action seeking judicial review of the Social Security Administration's (SSA's) final decision, the SSA staff will prepare the record of the claim to file with the Court. This includes all the documents and evidence SSA relied upon in making the decision.

In general, the Federal District Court will defer to the agency decision. It will not reverse the ALJ, unless the decision was not supported by substantial evidence, or is not in accordance with law. This means there must be a clear error of judgment. What does substantial evidence mean? Substantial evidence means more than a mere scintilla, must do more than create a suspicion of the existence of a fact to be established. More

than a mere scintilla is legalese for “Hey, look at these medical records! How in the world did the ALJ conclude that this person is able to work?! We need you to fix this!”

6) Alternative Sources Of Income During Your Claim

If you are in need of financial assistance during this time, there are resources for you.

Four sources of help during the claim:

1) SNAP, formerly called Food Stamps

A program that helps low-income individuals and families buy food. The amount of income and the number of people in the household are factored in to figuring out eligibility.

For more information, please go to

<http://www.ct.gov/dss/cwp/view.asp?a=2353&q=320232>

2) Temporary Assistance to Needy Families (TANF)

For more information, there is a handbook on the internet at

<http://www.ct.gov/dss/lib/dss/pdfs/TanfStatePlan.pdf>

3) State Administered General Assistance (SAGA Cash). Call the Department of Social Services in Connecticut. They can also give you a Medicaid card.

Requirements

- Over 18
- Unemployable
 - Short-term transitional - Medical documentation of inability to work for 2 – 6 months. Must have a recent work history.
 - Long-Term Transitional: Medical documentation of inability to work for six months or more.
- Asset Rules: The asset limit is \$250 per person, or up to \$1,000 for a family of four or more. The department does not count the equity of an automobile as long as it is no more than \$4,500.
- Applicants must be citizens or qualified aliens.
- Active substance abusers (drug and/or alcohol) are required to participate in treatment.

Receive \$219/mo.

How do people apply for SAGA cash assistance?

- Online - www.connect.ct.gov

- In Person
 - 3580 Main Street, Hartford, CT 06120-1187
 - 699 East Middle Turnpike, Manchester, CT 06040-3744
 - 117 Main Street Ext., Middletown, CT 06457-3843
 - Mail
 - <http://www.ct.gov/dss/lib/dss/pdfs/applications/w-1e.pdf>
- 4) Veterans Benefits (more in chapter 9)

These benefits are available from the Federal government.

Service connected- Monthly cash payments available for medical problems which arose during military service, or were caused by those medical problems.

Non-Service connected- Needs based, only for vets who served during a time of war and only if permanently and totally disabled.

5) Health Insurance

<http://www.huskyhealth.com>

Connecticut HUSKY

A HUSKY plan is one of three options that are available that will offer free or low-cost health insurance to uninsured children and youth in Connecticut. 1-877-284-8759

Husky A - Connecticut children and their parents (Medicaid)

Husky B - Uninsured children under age 19 in higher-income households (CHIP)

Husky C - Connecticut residents aged 65 or older; **or** who are aged 18 up to 65th birthday and who are blind, or who have another disability

Husky D - Connecticut residents who do not receive Medicare; and who are not pregnant, may qualify for HUSKY D (also known as Medicaid for the Lowest-Income Populations).

7) What Will Happen At The Hearing?

The hearing room will typically have at least four people; you, your lawyer, the ALJ, and the ALJ's clerk. You may have a witness to testify and there may also be a vocational expert and possibly a medical expert. The hearing is closed to the general public. It is private. Hearings typically last about an hour and sometimes if they go longer than expected, they will be extended into another day to finish up. Do not expect the ALJ to decide your case on the spot. A written decision will be sent, about two or three months after the hearing. If you win, it will take another month or two for you to receive your first payment.

The judge will ask you some questions and your lawyer will ask you some questions. If you have a witness, the witness may testify. The judge will ask questions of the vocational or medical expert. Your lawyer will have a chance to question those witnesses.

There are some general tips and guidelines you should follow when preparing for your hearing.

- 1) Show up.
- 2) Do not dress up, just wear what you normally wear during the day. Let the judge see you as you are during a normal day.
- 3) If you are not sure what the judge is asking, just be honest and ask him or her to rephrase the question in different terms. If you genuinely do not know an answer, just say, "I don't know." This may seem like an easy tip, however many claimants provide an answer to a question that was never asked. Answer the question that was asked. Do not guess. Tell the truth.
- 4) Telling people other than your doctor about your medical impairments is embarrassing, however to win a hearing, you should go into detail about how your impairments make it impossible for you to work at a full-time job. Do not exaggerate.

The ALJ will also decide how credible you are. The ALJ will weigh a number of factors. Social Security provides factors the ALJ will use, which include the following.

- The individual's daily activities;
- The location, duration, frequency, and intensity of the individual's pain or other symptoms;
- Factors that precipitate and aggravate the symptoms;
- The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms;
- Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms;
- Any measures other than treatment the individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and
- Any other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms.

It is important to be honest with the ALJ regarding the intensity and persistency of your pain and how your impairments limit your ability to work. The ALJ will use the seven factors listed above and compare them to your statements made to SSA employees and

any evidence within the medical records. A finding from the ALJ that you are not credible may bar you from a favorable decision.

8) Can My Benefits Be Reduced?

Yes, in certain circumstances. If you have received worker's compensation payments recently, your Social Security disability benefits may be reduced. The amount of the reduction depends upon your earnings history, your expected Social Security benefit, and the amount of the weekly comp payment.

If you get SSI, the monthly amount will be reduced if you have other income, which can include worker's comp, gifts, earnings, or "in kind" assistance such as free room and board or free food. If you have a loan, it can act a promise to pay someone back for room and board. The loan should be in writing and cannot be conditional on receiving SSI. It must also have a plan for repayment and that plan must be feasible. If there is no loan and you receive free gifts, including living arrangements, then your amount may be reduced by as much as one third.

As of the writing of this book, you are generally allowed to collect unemployment compensation while your Social Security disability case is pending. Receipt of unemployment is not an absolute bar to collecting Social Security benefits, although the judge can consider this as a factor. You should discuss this with your attorney before you apply for and collect unemployment compensation benefits. There are proposals to change the law in this area, so be sure to check with your attorney as to the current legal requirements.

If you receive Social Security disability benefits, you will be able to also collect service connected veteran's disability benefits. If you receive SSI, your veteran's benefits may reduce or eliminate any entitlement to SSI benefits.

If you are eligible for a private insurance benefit from a Long Term Disability plan, then your LTD benefit may be reduced because of SSD. Your Plan documents will specify if SSD reduces benefits.

9) Common Ways Claimants Lose

There are many ways a claimant can lose a hearing. Here is a list of the most common claim blunders.

- 1) **Skipping medical appointments.** Some people say that ninety percent of life is showing up. The judge will see a series of missed appointments and think, "If this person was truly disabled, they would do anything to become healthy." They do not want to hear excuses about why you didn't show up at your appointments. If you know of an appointment you are not able to attend, then let the medical facility know ahead of time, and ask that it be rescheduled. If you have difficulty leaving your house because of a mental impairment, or you do not have transportation, call and tell your medical provider prior to the appointment. Every time you skip an appointment the doctor will write in big letters **NO SHOW**. This sticks out like a sore thumb to anyone skimming through your records.
- 2) **Drug and alcohol use.** Plain and simply put, judges do not like it when a claimant is using drugs or alcohol. STOP all substance abuse.
- 3) **Inconsistencies in statements.** If the ALJ notices that you are telling your doctor a different story than you tell him or your lawyer, he or she may find that you are not credible. If the doctor's notes regarding your disabilities do not match your oral testimony during the hearing, the judge may deny your claim because he does not believe you. This will also happen if he thinks that you are embellishing the severity of an impairment. Many claimants do not tell their doctors about all of their problems in daily living because they forget or they think that the doctor is rushed. Write down your problems in daily living and bring that to the doctor at your appointments. It will remind you to tell the doctor about all of your impairments.
- 4) **You earn more than SGA.** SGA is \$1,090/mo. in 2015 and the amount increases every year. If you earn more than \$1,090/mo. consistently you will not be approved in your claim. Your attorney will be able to tell you if your work can be considered an unsuccessful work attempt. If it is, then it will not be counted against you.
- 5) **Failure to adhere to doctor's advice.** Part of failure to adhere to doctor's advice is skipping medical appointments, which is covered above. However, there is more to it than showing up. This also means taking all medications as they are prescribed and not altering the dosage on your own. If your doctor says you should go to a dermatologist, then you need to schedule an appointment with a dermatologist. If the doctor says do not do any strenuous activities while you recover, rock climbing is probably a bad idea.

- 6) **Your disability is short term.** A disability needs to disable you from work for twelve consecutive months.
- 7) **Not having medical insurance.** With the passage of the Affordable Care Act, you should be able to obtain some kind of health insurance. This will enable you to see medical providers for treatment. Social Security relies on doctor's opinions to evaluate your impairments. Social Security will not take your word for it that you are disabled. The burden of proof is on the person applying for benefits to show that they are truly disabled and their disability prevents them from working.
- 8) **Not hiring an attorney until right before the hearing.** This is a mistake. It is best to get an attorney as early in the process as possible. Don't wait until right before the hearing.
- 9) **Not hiring an attorney who does appeals.** Some attorneys do not do federal court appeals or even Appeals Council appeals. That puts you at a great disadvantage if you lose your case at the hearing level. It is hard to find an attorney to take over your case after you have lost at a hearing. Kimberlin Law, LLC does federal court appeals and Appeals Council appeals for cases where we have handled the hearing.
- 10) **Not meeting your attorney until the hearing.** Some nationwide claimants' representatives will not meet with you until the date of the hearing. This puts you at a disadvantage. Find someone local who will meet with you at the start of your case.

10) Am I Eligible For Veterans Disability?

You've served our country. Now you're disabled. Fighting the VA can be a daunting prospect. Claims can take years to navigate through the system. The two major VA disability benefits are service- connected compensation and needs based, non- service connected pension.

For service-connected disability, a veteran is entitled to compensation for disabilities incurred in or aggravated during active military, naval or air service. When a claim is made, the VA will make three decisions:

1. Whether disability is service connected
2. The percentage of disability – from 0% to 100%
3. The effective date. This is the date from which benefits are paid; usually the date of the claim.

After a veteran makes a claim to the VA Regional Office, the Regional Office will make a decision. If you disagree with the VA's decision, that can be appealed to the Board of Veteran's Appeals, and then to the Court of Appeals for Veterans Claims. This wasn't always the case; before the Court of Appeals for Veterans Claims was created in 1988 a veteran could not go to court at all.

There are many different ways to file a claim for benefits. A vet can have an open claim and they may not even know about it. An attorney can read your file and tell you if you have any open claims.

Until recently, a veteran could not retain an attorney for the early stages of a claim; the veteran was required to wait until a final decision was reached by the Board of Veteran's Appeals. A recent law changed that. Now, a veteran can hire an attorney after a Notice of Disagreement is filed, as long as the Notice of Disagreement is filed after June 22, 2007. This means that an attorney can be hired earlier in the process, before a Board decision. Hiring an attorney before a Board decision can prevent mistakes which could lead to an unfair denial.

There are key differences between Veterans Disability law and SSI/SSD

Differences:

- 1) Cases take forever. 10 years is common. 20-30 years is not unusual. Some veterans are fighting the VA from the time they leave the service.
- 2) Although there are 58 regional VA offices, there is only one court, the Court of Appeals for Veterans Claims, in Washington, DC. Appeals go to the Federal Circuit.
- 3) SSD/SSI is all or nothing. You are either disabled or you are not. VA includes payments for partial disabilities.
- 4) VA law changes on a daily basis.

11) What About Other Sources Of Disability Income?

11.1) Long-Term Disability Plans

Often, employers will have a long-term disability plans that cover disabled employees. This will provide you with a monthly income when you are unable to work. Most employee plans are covered by a comprehensive federal law called ERISA, the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq. These plans typically begin payments after an employer's short-term benefits coverage has run out. Sometimes individuals purchase their own policies.

If you are disabled, you should find out if your employer has a long-term disability plan that might cover you. If you are denied, these plans provide for an appeals process within the plan, and then eventually you can file an appeal in court.

Plan provisions are complicated. They vary from plan to plan. Our best advice to anyone trying to make a claim under his or her insurance policy is to find an attorney ASAP. An attorney will prevent mistakes, which could lead to an unfair denial. Don't wait until you're denied to consult an attorney.

In any ERISA-governed dispute over benefits involving a long term disability claim denial, the Court may adopt one of two possible standards of review: either a de novo standard or a deferential standard. The outcome of your case may hinge on which standard the court applies.

The first is a de novo review. This is the default standard of review and it is always the standard of review the disabled claimant wants. De novo means, starting over anew and the court will use a fresh set of eyes when looking at the insurance company's decision. The court will interpret the LTD policy and determine whether or not you are disabled. It will not defer to the insurance company decision. Unfortunately for many claimants, this will not be the standard the court will apply. In 1989, the Supreme Court decided a case called Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, (1989). The Supreme Court held that de novo review is the default standard of review for the denial of ERISA claims "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." This is a great example of an exception swallowing the rule. After this ruling, just about all insurance companies inserted the discretionary language and granted themselves the power to decide whether or not a participant is disabled.

A typical LTD policy and may state, "[T]he Insurance Company shall have the authority, in its discretion, to interpret the terms of the Plan documents, to decide questions of eligibility for coverage or benefits under the Plan, and make any related findings of fact. All decisions made by the Insurance Company in this capacity shall be final and binding on Participants and Beneficiaries of The Plan to the full extent permitted by law." The company that must pay your claim if you are disabled is the same company that decides whether or not you are disabled. The conflict of interest flies in the face of fairness. If

there is a discretionary clause in your LTD policy, the courts apply a deferential standard of review. The reviewing court will not be able to reverse the insurance company's decision unless the decision is arbitrary and capricious. This means the insurance company must be unreasonable. Keep in mind the insurance company will probably require that you be evaluated by a doctor they hire.

Some courts have recognized this inherent conflict of interest and have applied a less stringent deferential standard of review. If the court finds a conflict of interest which influenced the decision, then the court will be less deferential. The law in the Second Circuit states, "Generally, federal courts should avoid excessive judicial interference with pension plan administration vested with discretionary authority, by applying a deferential "arbitrary and capricious" standard reviewing a challenge its decisions." Miles v. New York State Teamsters Conference Pension & Retirement Fund Employee Pension Benefit Plan, 698 F.2d 593, 599 (2d Cir. 1983), cert. denied, 464 U.S. 829 (1983). "Under an arbitrary and capricious standard, a court may overturn an ERISA plan administrator's decision to deny benefits only if the decision was without reason, unsupported by substantial evidence or erroneous as a matter of law." Durakovic v. Building Service 32 BJ Pension Fund, 609 F.3d 133 (2d Cir. 2010).

This standard of review shows why it is even more important than ever for a plan participant to hire a lawyer as soon as possible, and not wait until after a denial.

Insurance companies will frequently send private investigators to spy on claimants who will record everything you do and use that information against you when they deny your claim. The insurance company will act as sole decider on your claim. It is easy to see why a disabled person may be denied unfairly. A lawyer early in this process is of the utmost importance. Do not be distracted by the friendly voice on the phone from the insurance company. They are trying to deny your claim!

11.2) Connecticut State Employees Retirement System

If you are a Connecticut State employee your disability issues can get complicated quickly. Let's say you become disabled and you tell the state of Connecticut that you can no longer work. Your medical records are given to a Medical Examining Board (MEB), which is composed of a group of doctors. Whatever the MEB decides on a medical issue is final and you have no right to judicial review. In SSD, SSI, and LTD, a person will look at your medical records and decide whether you are disabled. If you disagree with this decision, then you can appeal it to an appeals court. Unfortunately, under the Connecticut system, the MEB makes all medical decisions. The MEB has discretion and its power is completely unchecked.

Disability Standard

- First 24 months: If he or she is permanently unable to continue to render the service in which he has been employed: that is the employee is unable to perform the duties of his occupation.
- After 24 months: If such member is totally disabled from any suitable and comparable job. "Suitable and comparable" can refer to any job that a disability retiree is capable of performing considering his age, education, physical limitations, vocational skills, and experience.

Types of Disability

There are two types of disability retirement available to eligible Tier I, II, IIA, and III SERS members: a service connected disability (SCD) and a non-service connected disability (NSD) benefit.

1. **Service Connected Disability Retirement Benefit** - A member may apply for this retirement benefit if while on active payroll in state service, he or she becomes disabled as a result of any injury received while in the performance of his or her duty as a state employee. The member may be eligible for service connected disability retirement regardless of age or years of service
2. **Non-service Connected Disability Retirement Benefit** - A member is eligible for this benefit if, prior to age sixty-five, he is disabled and has completed (or has) at least ten years of SERS service. In other words, employees with less than 10 years of service credit are only eligible for a service connected disability retirement: they are not eligible to apply for a non-service connected disability retirement benefit.

Offsets to state disability benefits include:

- Social Security disability payments, including payments made to your spouse and children due to your disability;
- Workers' Compensation benefit payments, limited to temporary total or temporary partial benefits;
- Disability Compensation under Section 5-142 of the Connecticut General Statutes;
- Outside income from a job.

Connecticut has a complex formula for determining out how much you can receive on a monthly basis. Zimberlin Law, LLC can also evaluate your state disability claim.

Sample Intake

Name:

Address:

Phone Number:

If SSI only, what is your total household income?

How old are you? How tall are you? How much do you weigh?

When did you last work?

What is your prior work experience?

What are your impairments?

If a mental disability - Have you been in a psychiatric hospital over night?

If a mental disability - Have you ever been in intensive outpatient treatment for your mental condition?

Do you have any history of drug or alcohol use? If so, give details.

Who are your current doctors?

How many children under the age of 19?

What is the status of your claim?

Have you had any previous hearings with an ALJ? If so we will need to see the ALJ decision or the CD if you still have it?

How old were you when you were disabled?

If under 22 years old, do you have a parent who is deceased, disabled or retired who worked long enough to be covered by SS?

Where were you born?

What type of claim did you file?

Are you receiving SAGA cash?

Do you have medical insurance?

If applying for SSI only, what is your spouse's income and source?

About the Authors

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Ms. Zimmerlin is a graduate of Ohio Wesleyan University and received her J.D. degree, *summa cum laude*, from Western New England College of Law. Following graduation, she clerked for Chief Justice Joseph Bogdanski at the Connecticut Supreme Court. She is a frequent speaker on disability issues. She has been a presenter at NOSSCR and NOVA seminars. Ms. Zimmerlin is also a Small Claims Magistrate for the Judicial Department, State of Connecticut; a special master for the United States District Court; and has been a hearing officer for the Department of Education, Bureau of Rehabilitation Services and the Department of Mental Retardation. Ms. Zimmerlin is a member of the Connecticut Bar Association, the Hartford County Bar Association, and the Manchester Bar Association, NOSSCR, and NOVA. She is admitted to the United States District Court for the District of Connecticut, the Second Circuit Court of Appeals, the Court of Appeals for Veterans Claims, and the Federal Circuit. She is a past adjunct faculty member at Western New England College of Law. She is chair and founder of the Education Law Section of the Connecticut Bar Association, past Chair of the Administrative Law Section, and an Executive Board member of the Disability Law Section.

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Russell D. Zimmerlin always wanted to be a lawyer standing up for people who grievously suffered physically and financially by careless individuals. This is why Russell is especially honored to be a part of the Zimmerlin Law team, representing claimants in Veterans Disability, Connecticut State Employee Disability Retirement, Social Security Disability/SSI, ERISA/Non-ERISA based Long-Term Disability Insurance plans, moving violations, and title searches. At the firm, Russ works very hard in all stages of litigation trying to achieve optimal results for his clients, all while keeping them informed throughout the process. Russell's solid work ethic and passion for the law was evident in school, where he graduated from New England Law | Boston near the top of his class and earned Dean's list honors every semester. Hitting the books, however, couldn't keep Russell out of the court room, where he was exposed to high stakes litigation and trials both as a law clerk and during his hands on clinic work.

In his spare time, Russell can be found exploring Hartford and taking in the City's diverse culture and character (not to mention all the great food). Russell also enjoys watching sports, playing basketball, hiking, biking, reading, and has completed a marathon. Finally, Russell tries to give back to the community by providing pro bono legal representation, and guest speaking to fellow attorneys about issues impacting disability law. Russell stays engaged in the community by being a member of the Hartford County Bar Association, the Connecticut Bar Association, the Manchester Bar Association.