



15 SECRETS TO WINNING YOUR DISABILITY CLAIM

TIP NO. 1:

Never assume that what SSA tells you is true. Unfortunately, some of the advice Social Security Administration (SSA) employees provides to the public is incorrect. So if you aren't happy with what SSA told you over the telephone, you'll be glad to know it may not be correct. The problem is, many people have told me they did not file a disability claim for years (and went without benefits they deserve) simply because a SSA employee gave them bad information.

Don't give up on your claim until after you have reviewed your case with a disability lawyer. Disability lawyers know more about the law than SSA employees and will give you correct information.

TIP NO. 2:

Never assume SSA will approve your claim. Not true. Many people believe that because they have paid into SSA, their claim should easily be approved when they apply for disability benefits. Many people believe it's just a matter of filling out the forms and going through the process. But this just isn't true. *SSA denies 70 to 75% of first-time claims.* SSA denies 82% of claims that are appealed for Reconsideration. However, the good news is that when cases are heard before judges, nationwide over half (53%) are approved.

And, when you hire an experienced disability attorney, your chances are greatly improved because a disability attorney will: (1) Appeal every denial within 60 (sixty) days of receipt, (2) build a strong case by understanding what information SSA requires, (3) make sure to present it properly before the Court, and (4) argue the legal and factual aspects of your case to the judge.

TIP NO. 3:

Never assume the disability forms you fill out will win your case. Usually they will not. Claimants hurt their case by *overstating* what they can do. In other words, claimants frequently think they can physically do more than what they really can. In most cases, SSA and judges rely heavily on medical records as well as your doctor, psychiatrist and/or psychologist's opinion about your ability to work full time. If the judge isn't happy with you...if he doesn't believe

what you're saying...or if he is looking for a reason to deny your claim, he may look for inconsistencies in answers you provided earlier on the forms. For example, if you answer one way on the form and testify at a hearing to something else, the judge may use the answer on the form to undermine your credibility and support a denial of your claim. You should never complete these forms without legal advice.

When completing the forms, be honest, accurate and *brief!* You should always answer the question in the space provided – do not attach additional sheets of paper or write in the margins. When answering questions about what you are capable of doing it is important to assume you are working full time on a sustained basis *i.e.*, 8 hours per day, 5 days per week, 40 plus hours per week.

TIP NO. 4:

Never assume that your medical and/or psychological symptoms will be enough for the judge to approve your claim. Not true. You need detailed medical records which document your symptoms and limitations and specific opinions from your doctor, psychiatrist and/or psychologist if you hope to win your case. Their opinions will only be given weight by the judge if you have received continuous and consistent medical treatment. If you are not treating regularly with your doctor you are jeopardizing your case!

It is critical you receive continuous and consistent medical treatment and care so you can provide SSA and a judge with current and complete medical records which support your doctors' opinions.

TIP NO. 5:

Never assume your diagnosis will win your claim. It won't. It's true that SSA needs a diagnosis. But SSA also needs medical proof that your diagnosis causes limitations that are so significant and severe that they preclude your ability to work *full time on a sustained basis.*

Advice: Disability cases are won based on your limitations, not your symptoms. Make sure you provide detailed medical records from your doctor that reflects your symptoms, his diagnosis, and your limitations.

TIP NO. 6:

Never assume SSA will be persuaded by any type of medical treatment you choose. Be aware that SSA and judges are most persuaded by mainstream doctors (M.D., D.O., psychologists) and how you respond or fail to respond to mainstream treatment. If you are not taking medications or are not receiving mainstream treatment by a mainstream doctor, you may be jeopardizing your claim.

To win your claim, try to exhaust every medical treatment your mainstream doctors recommend, so you can prove that in spite of doing so, you continue to be unable to work full time on a sustained basis.

TIP NO. 7:

Never assume your family doctor's opinion is the only one you need. This may not be a good choice depending upon your diagnosis. If your diagnosis is made and treated by a specialist (M.D., D.O., Ph.D), you should be treated by a *board certified* specialist and your family practitioner. From a legal standpoint, you want to show the judge your diagnosis is correct and that you are receiving the best possible medical care. You have a stronger case when your doctor is a specialist who is skilled and experienced at treating people who have your condition. Social Security law generally gives *more* weight to the opinions of a specialist than a general practitioner. As a result, SSA and the judge will look more closely at the credentials of the doctor who is providing the opinion.

Get your medical treatment from a specialist because the more skill and experience your doctor has, the more likely you are to win your claim

TIP NO. 8:

Never assume your doctor will support your claim for disability benefits. He may not. Some doctors *refuse* to help patients with their disability claims. Many doctors do not know SSA's definition of disability and believe that one has to be bed ridden to qualify. In general, doctors are very conservative in their opinion about a patient's ability to work. Because SSA and a judge will want to know if your doctor supports your claim, it is critical you know the same information! After you have established a

relationship with your doctor you should discuss with them the fact that you have filed a claim for disability. Ask if they will support your claim – if they will not, you should consider finding another doctor immediately because their opinion is not likely to change! It is *critical* your doctor supports your inability to work *full time on a sustained basis!*

As soon as possible, you should learn whether your doctor supports your disability claim. If not, consider finding a more compassionate doctor who will. One place to find a referral is to attend a local support group for individuals who share your diagnosis.

TIP NO. 9:

Never assume you have to go to SSA's doctor for a medical examination. Often, SSA wants a claimant to go to a disability examination with a doctor/psychiatrist/psychologist it chooses. Unfortunately, the doctor is not really "independent" and performs many of these examinations for SSA each month. In my experience, the majority of the time the doctor will conclude you are not disabled and can return to work. Once this opinion is included in your file SSA and a judge will have sufficient evidence to deny your claim. *Here's the good news:* SSA rules allow your doctor perform the disability exam and SSA should pay for all or at least part of it. Naturally, if your doctor supports your disability claim he will probably conclude your condition precludes your ability to work. Once your doctor's exam report is in your file with a conclusion that you are disabled, SSA and a judge may have sufficient medical information to approve your claim.

This strategy *is only possible* if you are certain your doctor supports your claim and is willing to do the examination. If you do not have a doctor or your doctor will not perform the examination you must go to SSA's doctor or risk having your claim denied or closed out. *This strategy really should only be employed by a disability lawyer because complex regulations are involved and must be complied with.*

TIP NO. 10:

Never assume an entire year has to pass before you can file a disability claim. Not true. SSA law requires that before you can be approved one of the following must be true: (1) you have already been disabled and out of work for one year, or (2) your doctors *expect* that you will be unable to work for a minimum of one year from the date you last worked, or (3) your medical condition is *expected* to result in death. Too many people have told me that an SSA employee said they could not file a claim

until one year had passed since they last worked. This information is totally incorrect and if followed, will almost certainly cost you disability benefits and medical insurance!

Apply for disability benefits as soon as you or your doctors believe your medical and/or psychological condition will preclude you from working for at least one year. Waiting to file will only cost you benefits that you may not be able to recover.

TIP NO. 11:

Never assume that if you lose before a judge at a hearing, you can simply file another claim. When you have a hearing before a SSA judge, you do not want to lose. This is because, practically speaking, your best chance at winning is at your first hearing before a judge. True, you can file a second application if you lose at a hearing; however, the second time you go through the process, SSA and a judge will know your first claim was denied. In my opinion, this may have a detrimental effect on your second claim as the second judge will know.

Make sure your case is properly prepared so you can present your strongest case at the first hearing.

TIP NO. 12:

Never assume you can handle your case without a disability lawyer. Most people can't. *Social Security disability laws are complex*, even many lawyers do not understand them. To win your claim, you need to very carefully prepare your case from the very beginning. In addition, it is critical to understand what you need to prove legally in order to win your case; if you do not know what you need to prove – why would you risk going before SSA or a judge without knowing how to win your case? The fact that you and your doctor agree you are disabled is not enough to win your case.

Retain only an experienced disability lawyer. They will help build your case, develop a case strategy, and obtain a complete set of your medical records and critical opinions from your doctor that will maximize your chances of success. More often than not, your doctor will not be familiar with the stringent criteria that SSA and a judge will utilize in determining whether you meet *their* definition of disability

TIP NO. 13:

Never assume any lawyer can help you win your claim. Not true. You want a disability lawyer who is familiar with SSA laws and regulations. Similar to doctors, attorneys generally specialize in a certain

area of the law. You wouldn't go to a dentist for a physical examination, so do not pick just "any" attorney to represent you in your disability claim.

Choose a disability lawyer whose practice is exclusively dedicated to representing disability claimants because your odds of winning will increase. A seasoned disability attorney will understand the strategy and tactics that are crucial to helping you win your claim.

TIP NO. 14:

Never assume you should not hire a lawyer until your case has initially been denied. Not true. You can hire a lawyer any time you wish. Unfortunately, many employees at SSA will tell you that it is not necessary to hire an attorney until you have been initially denied. Following this advice could be fatal to your claim! Why? Because in general, *SSA will begin preparing a case against you from the day you file your application!*

You should consult with and/or hire a disability attorney as soon as possible after you file your application. The attorney can explain how the process *really* works and lay the proper foundation for your case by developing a case strategy. The attorney can also guide your case through the myriad of rules and regulations that are certain to have an effect on your entitlement to benefits.

TIP NO. 15:

Never assume that you cannot afford a lawyer. Not true. In almost every case, you will *only* pay the attorney a fee if and when you have won your case and received benefits. SSA law limits the amount of money your lawyer can earn from your disability claim. Generally, by the time you win your claim you will have accrued back benefits. The law mandates the fee can only be 25% of your past benefits and is capped at \$5,300.

What may be at stake? By way of example, assume a claimant is 45 years old and their monthly disability benefit is \$1,000.00. If the person never returns to work before age 65, due to a disability, their disability benefits would total \$240,000.00!

This amount does not include the value of the lifetime health insurance they would also receive through Medicare or Medicaid.

Because the amount of the benefits can be staggering, the truth is, you simply can't afford not to hire an experienced disability attorney!

THE IMPORTANCE OF TALKING TO YOUR DOCTORS ABOUT YOUR DISABILITY

The importance of talking to your doctors about your disability case cannot be overemphasized. The most important piece of evidence in your disability case is the medical records your doctors provide. The medical records provided by your treating doctors are given considerable weight in a court of law. Judges rely heavily upon your doctor's records because it provides the judge with an unbiased and objective medical opinion about your disability.

Unfortunately, doctors tend to write very short and brief notes. Oftentimes, they only scribble the final diagnosis of your condition and fail to write notes about **how** your condition prevents you from working.

You cannot win your case simply because you have been diagnosed with a medical condition. What is really important, and what the judge needs to know, is **how** that medical condition impairs your ability to work. Let's take a look at two different scenarios:

SCENARIO NO. 1:

For example, let's say that your doctor has diagnosed you with arthritis. If you fail to discuss your disability case with your doctor, then he/she will merely scribble the word "arthritis" in your medical records and prescribe some medications. That's it -- nothing more.

Later, when a judge reads that report there will not be enough evidence for the judge to make a ruling that you are "disabled." You will likely lose your case. Accordingly, Scenario No. 1 should be avoided.

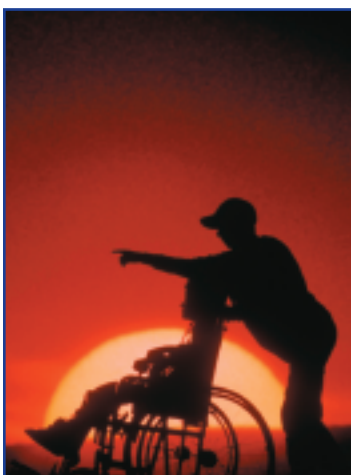
SCENARIO NO. 2:

Scenario No. 2 is the proactive approach. For example, let's say you've been diagnosed with "arthritis" but this time, on every single visit, you remind your doctor that you are seeking disability benefits. You remind him that you are too sick to work and have no income. In other words, make sure your doctor fully understands the circumstances surrounding your disabilities.

Most importantly – you must remind and discuss with your doctor exactly how your condition prevents you from working. For example, if the arthritis causes you severe pain, stiffness and swelling which prevents you from lifting or carrying more than 10 lbs – tell your doctor. If you can't sit in a chair for more than 30 minutes—tell your doctor. Do medication side effects affect your ability to focus and concentrate? Do they upset your stomach? Tell your doctor! He will write all of this down in your medical records.

Now, with this information in your medical records, the judge will have persuasive medical evidence that explains **how** the arthritis prevents you from working and hence why you are disabled. You win your case; receive a lump sum retroactive check and continuing future monthly benefits as well as Medicaid (health insurance).

Mission Accomplished!



HOW LONG WILL MY CASE TAKE?

Without the aid of a crystal ball there is simply no way of knowing exactly when your case will be resolved. There are many different factors that affect the time it takes the Social Security Administration to process a claim but the number one reason is simply the government's serious backlog of pending cases caused by their red-tape.

Nationally, it takes the Social Security Administration ("SSA") approximately 3-6 months to reach a decision on any Initial Claim; an additional 12 months to reach a decision at the Reconsideration level; and an additional 12-18 months to have the case heard before a judge.

And, because claims are generally processed on a "first come first served" basis, the waiting periods in the State of Florida tend to be even longer than the national figures due to the large number of retirees living in our state.

If you have not heard from your attorney's office in a while don't worry. This does not mean that you've been forgotten – it simply means SSA has not taken any new action on your case. As they say, "patience is a virtue." This is especially true of anyone seeking disability benefits from the government. Nevertheless, we encourage you contact us with any questions or comments.

Just remember that our firm does not collect a fee unless, and until, we win your case. So you can rest assured that we will be working diligently and moving your case forward as quickly as humanely possible.

In the meantime, we ask that you continue to visit your doctors and other health care providers on a consistent basis so that we will have developed sufficient medical evidence to prove your disability claim. Don't forget to discuss and explain to your doctors how your medical conditions limit your ability to work so that they may properly document your impairments



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Social Security Disability Attorney



Chris graduated *cum laude* from the University of Miami School of Law where he earned his Juris Doctor degree. While in law school, Chris received numerous achievement awards and was a member of the Law Review, Moot Court Board, Honor's Council and Dean's List.

After gaining experience as a corporate trial attorney, Chris decided to dedicate his professional career to representing the disabled after he *personally* experienced the medical and financial burdens faced by a close relative who, like you, was disabled and unable to work.

Chris has substantial experience in handling all aspects of the disability litigation process from Initial Claims to Federal Court appeals. Chris takes his knowledge and experience from the courtroom to the classroom at Florida International University (F.I.U.) in Miami, Florida where Chris is an Adjunct Professor of Law teaching aspiring law students and paralegals about personal injury, medical malpractice and disability law.

Chris is a member of the Social Security Disability Law section of the Association of Trial Lawyers of America and the National Organization of Social Security Claimants' Representatives, as well as the American Bar Association and Florida Bar.

If you would like to learn more about your disability case, please contact our offices for a free case evaluation and consultation.

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