

**SAMHSA SOAR TA Center**

# Submitting Appeals Using the SOAR Model

**A Toolkit for Case Workers**

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## Appeals: The Basics

### APPEALING A SOCIAL SECURITY DENIAL

#### About Appeals

All applicants have the right to file an appeal if Social Security denies their application for disability benefits. If the appeal is approved, the applicant will receive back payments to the time of their initial application.

#### SSA Appeal Levels

Social Security has four appeal levels: Reconsideration, hearings before an Administrative Law Judge (ALJ), Appeals Council, and Federal Court.

#### Reconsideration

- Reconsideration is an opportunity to have the application reviewed by different staff at Disability Determination Services (DDS) and to submit additional medical records and evidence.
- The request for reconsideration must be filed within *60 days of receipt* of the initial denial notice.
- SOAR providers should feel comfortable assisting with Reconsiderations as there are similarities to an initial claim. You will submit supporting documents (medical records, Medical Summary Report (MSR), etc.) and DDS will use the same disability determination process.

#### Hearings before an Administrative Law Judge (ALJ)

- If SSA denies the reconsideration request, the applicant may seek further review of their claim by requesting a hearing before an ALJ.
- Hearings are scheduled with the Office of Hearings Operations (OHO).
- It can take on average, one year for the hearing to be scheduled.
  - You can request an expedited hearing due to dire need.
  - You can request a Prehearing or "On-the-Record" Review to avoid lengthy wait times for an ALJ Hearing.
- You do not need to be an attorney to assist someone at a hearing. However, most SOAR providers will not represent applicants at the ALJ level. Rather, you will connect applicants to advocates with more ALJ hearing experience, such as Legal Aid Advocates.

#### Appeals Council and Federal Court

- The third and fourth levels of appeal are less common.
- If the applicant disagrees with the ALJ's decision, they can ask for a Review by SSA's Appeals Council.
- While non-attorney representatives may assist, SOAR providers will typically advise applicants to consult with a legal services organization.
- If the applicant disagrees with the Appeals Council, they can file a lawsuit in Federal district court. Non-attorneys are not permitted to represent applicants at this appeal level.

## Considerations for Filing an Appeal

There are some circumstances under which filing an appeal may be more likely to result in an approval.

- The applicant has an impairment that meets or equals a [Listing](#), or has a combination of severe impairments which would preclude completing sedentary work, or any work in the national economy.
- An applicant applied on their own and was denied for failure to cooperate, (e.g., they did not attend a consultative exam or respond to a request for more information).
- You have obtained additional medical records, the applicant's condition has worsened, or there is another diagnosis or condition to add to the appeal.

## Communicating with the Applicant

- Be sure to inform applicants of their right to appeal. Explain the process so they understand next steps.
- Let applicants know as soon as possible if you are unable to assist them with an appeal. If possible, connect them to other agencies or SOAR providers that provide this service. Share the SOAR resource, [SSA Appeals Process: Information for Applicants and Case Workers](#).

## Working with Attorneys and Non-Attorney Representatives

- Attorneys or non-attorney representatives can be excellent advocates for individuals applying for benefits and appealing denials.
- If a representative is already involved with an appeal, see if you can help by providing additional evidence or documentation.
- If an applicant wishes to dismiss their representative, they are permitted to do so.
- The representative may file a fee petition to SSA and, if benefits are awarded, receive partial payment based on work already completed at withdrawal time. (This does not apply to SOAR providers who do not charge the applicant for their services.)

## Appointed Representative Services (ARS)

- Online access to a Social Security disability applicant's electronic folder or eFolder (EF) is available for Appointed Representatives with ALJ hearing and Appeals Council level cases. For non-attorney representatives to be eligible for ARS, you must have submitted at least **one** hearing request to OHO.
- ARS users can access a list of cases pending at the initial and reconsideration levels.
- Visit SSA's [ARS page](#) for more information.

# Reviewing the Electronic Disability File

THE FIRST STEP FOR ALL APPEALS

## About the Disability File

The first step when preparing to appeal a denial is to review the Electronic Disability File, so you understand SSA's rationale for denying disability benefits. This should be done as soon as possible. You should assess whether SSA made any errors in the decision or if any medical documentation is missing from the file. You can help by correcting these issues on appeal.

- The disability file includes the SSA-831: Disability Determination and Transmittal, SSA-4268: Explanation of Determination, unexhibited medical documentation, and various SSA/DDS communications.
- Even if you filed the applicant's initial application or reconsideration complete with medical records and other documents, other contents of the disability file are important to review.

## Requesting the Disability File

- Applicants and authorized representatives with a filed [SSA-1696](#) can obtain relevant application information.
- Request the file by faxing a signed [SSA-3288: Consent to Release Information](#) to the attention of your local SSA field office.
- SSA keeps all new disability files in electronic format; paper files are no longer generated.
- The local SSA field office will provide **one CD-ROM** copy of the applicant's file for free if the request is for "program purposes" (e.g., in connection with a claim for benefits).

## Opening the CD-ROM

- No additional software is necessary to read the information on the encrypted CD.
- The CD will be labeled with claimant's last name and first 4 numbers of their SSN.
- Insert the CD into your computer's disk drive and double-click on the **pme.exe** file.
- You will be asked to enter an Account Name and Password.

## Enter Account Name and Password

- Account Name: **SSA**
  - All OHO encrypted media uses this Account Name. It is **not** case sensitive (i.e., ssa or SSA).
- Password
  - The password will always be nine characters long:
    - First 4 letters of claimant's first name in lower case. (If the name is less than four characters, enter number signs (#) after the last letter).
    - A number sign (#)
    - Last 4 numbers of the claimant's SSN
  - Password Examples
    - Name: Mickey Mays / SSN: 123-45-6789. Password: mick#6789
    - Name: Tom Mays / SSN: 123-45-6789. Password: tom##6789
  - Note: If you are unable to determine the correct password, call the local SSA or OHO office that sent you the CD for assistance.

## Reviewing the File

### SSA-831: Disability Determination and Transmittal

#### Overview

- The [SSA-831: Disability Determination and Transmittal](#) is the official disability determination document DDS uses to record the decision.
- This form is helpful, especially when the denial notice is unclear. The form should contain the name of the DDS disability examiner and the DDS medical consultant who worked on the claim.
- Most of the information on the form are [SSA codes](#); several key codes are highlighted below.

#### Important SSA Codes

- Item 19: States that the applicant is not disabled through the date of the determination (or other pertinent dates, such as expiration of insured status)
- Item 22: Citation to the Sequential Evaluation regulation under which a claim is denied
- Common denial basis codes:
  - H1: The individual has a severe impairment(s) but is found not disabled because they have the functional and vocational capacity to engage in substantial gainful activity in relevant past work (Step 4)
  - J1: Ability to do other work (Step 5)
  - K1: Failure to follow prescribed treatment
  - L1: Refusal to appear for a consultative exam (CE)
  - M5: Failure to cooperate in submitting evidence of disability
  - Z1: DAA (Drug Addiction and Alcoholism) is material to the determination of disability
  - N1: Engaging in Substantial Gainful Activity (SGA)
- Item 32B: This includes the specialty code for the doctor who signed the form.

### SSA-4268: Explanation of Determination

#### Overview

- The SSA-4268: Explanation of Determination states the “Disability Determination Rationale.” This is also known as the *technical rationale*. It is the step-by-step reasoning that SSA and DDS used to make the disability determination.
- Although it may contain SSA technical language that is difficult to understand, it is in your best interest to look it over as it contains more detailed information than the denial notice.

#### Elements of the Technical Rationale

- Symptoms and test results
- Whether the impairment(s) meet the requirements of a listing
- The applicant’s Residual Functional Capacity (RFC)
- The exertional level and skills the applicant’s past jobs required
- Whether the applicant can do past work, given current limitations
- Whether a medical-vocational rule says that, with vocational factors (age, education, and experience), the applicant should be able to do other work, and if so, what type of other work exists that is suitable

## Reconsideration

### APPEALING AN INITIAL DENIAL

#### About Reconsideration

Reconsideration is an opportunity to have the application reviewed by different staff at Disability Determination Services (DDS) *and* to submit additional medical records and evidence. SOAR providers should feel comfortable assisting with reconsiderations as DDS staff will use the same disability determination process as an initial claim.

#### Review the Initial Denial

- Read the denial notice and record the date on the notice, type of claim, and medical sources listed. Confirm that it matches your records.
- Request a copy of and review the electronic disability file to help you understand what went wrong and provide the basis for an appeal.

#### Submit the Reconsideration Request

- The request can be submitted in-person or online via iAppeals (**recommended**).
- The request for reconsideration must be filed within 60 days of receipt the initial denial notice. (The 60-day period begins 5 days after the date on the denial notice to allow for mailing time).
  - *Late Filing*: If the 60-day deadline is missed, you will need to submit a “Good Cause for Late Filing” request (see sample provided in this toolkit) along with documents listed below *to your SSA field office*. This request can serve as a protective writing date (to establish a protective filing date) for a new initial claim if the applicant does not establish good cause for late filing.

#### Submit Online via iAppeals (Recommended)

- Follow the guidance in the “Filing Online with iAppeals” section below.

#### Submit In-person

- Contact your SSA field office to arrange hand-delivery or fax (if applicable).
- Submit the following documentation (sample completed SSA forms are available on the [SOAR website](#)):
  - [SSA-561: Request for Reconsideration](#)
  - [SSA-3441: Disability Report - Appeal](#)
  - [SSA-827: Authorization to Disclose Information to SSA](#)
  - Other attachments (e.g., SSA-1696 (if not already filed at initial level), Medical Records, new/revised Medical Summary Report (MSR) and other documents).

# Administrative Law Judge (ALJ) Hearing

## APPEALING A RECONSIDERATION DENIAL

### About ALJ Hearings

- Hearings are scheduled with the Office of Hearings Operations (OHO). It can take on average one year for the hearing to be scheduled.
- You do not need to be an attorney to assist someone at a hearing.

### Review the Reconsideration Denial

- Read the denial notice and record the date on the notice, type of claim, and medical sources listed. Confirm that it matches your records.
- Request a copy of and review the electronic disability file to help you understand what went wrong and provide the basis for an appeal.

### Submit the ALJ Hearing Request

- The request can be submitted in-person or online via iAppeals (**recommended**).
- The request for a hearing must be filed within 60 days of receipt of the reconsideration denial notice. (The 60-day period begins 5 days after the date on the denial notice, to allow for mailing time).
  - *Late Filing*: If the 60-day deadline is missed, you will need to submit a “Good Cause for Late Filing” request (see sample provided in this toolkit) along with documents listed below *to your SSA field office*. This request can serve as a protective writing date (to establish a protective filing date) for a new initial claim if the applicant does not establish good cause for late filing.

### Submit Online via iAppeals (Recommended)

- Follow the guidance in the “Filing Online with iAppeals” section below.

### Submit In-Person

- Contact your SSA field office to arrange hand-delivery or fax.
- Submit the following documentation (sample completed SSA forms are available on the [SOAR website](#)):
  - [HA-501 Request for a Hearing by Administrative Law Judge](#)
  - [SSA-3441 Disability Report- Appeal](#)
  - [SSA-827 Authorization to Disclose Information to SSA](#)
  - You *may* be asked to complete the [HA-1151 Medical Source Statement of Ability to do Work-Related Activities \(Physical\)](#).
  - Other attachments (e.g., SSA-1696 (if not already filed at the initial or reconsideration level), Medical Records, new/revised Medical Summary Report (MSR) and other documents)

### Avoid or Expedite a Hearing

- To avoid long wait times for ALJ hearings, representatives can request a Prehearing Case Review, an On-the-Record (OTR) Review, or an expedited hearing due to dire need.
- Learn more in the “Prehearing and On the Record (OTR) Reviews” section below.

# Filing Online with iAppeals

## RECONSIDERATIONS AND ALJ HEARINGS

### About iAppeals

- iAppeals is a Social Security Online Service that allows authorized representatives and applicants to electronically file a reconsideration **or** ALJ hearing request for SSI and SSDI.
- iAppeals users have the option to submit (upload) forms and other evidence with their appeal requests.
  - *Note:* This capability is not available at the initial level!
- SSA has recorded a very helpful [SSA iAppeals Instructional Video](#) that walks through the use of iAppeals and includes screen shots of the application.

*SOAR Tip:* Although non-attorney representatives are not required to file appeal documents online by SSA, we *strongly encourage* SOAR providers to do so. SSA regulations currently require that attorneys file requests for reconsideration and hearings online.

### Forms Included in iAppeals

- i561: Request for Reconsideration **or** i501: Request for Hearing by Administrative Law Judge (ALJ)
- i3441: Disability Report – Appeal
- e827: Authorization to Disclose Information to SSA
- iAppeals Application Utility for Attachments (e.g. SSA-1696 (if not already on file), Medical Records, MSR and other documents)

### Four Steps of an iAppeal

1. Identification
  - Basic screening information about the applicant and preparer
  - Reentry Number provided
  - Appeal Requests (i561 or i501)
2. Medical (i3441)
  - Updated information about the applicant
  - Updated medical information
  - Updated contact information
  - Activities and Training (i3441)
  - Updated information on education and work activities
3. Remarks Section
  - Medical Authorization
  - Review (Attachments)
  - Review entered information before submission
4. Attachment Utility
  - Confirmations and Receipts
  - Personalized Cover Sheet option
  - Start another appeal application option

## Filing an Online Appeal

Start the iAppeal as soon as possible, keeping in mind the 65-day deadline from the date on the denial notice.

- Go to SSA's [Disability Appeal website](#). See above for the steps and types of information collected.
- You do not need to complete the process in one session. If/when you exit, you will be provided with a re-entry number that you can use to return to the iAppeal. **Save this number!**
- You will receive a message that alerts you to how many days are left until the cutoff date. **Mark your calendar so the appeal deadline is not missed.**
- The iAppeal is **not considered complete** until the i561 (Request for Reconsideration)/i501 (Request for Hearing), e827, and i3441 (Disability Report-Appeal) are submitted.
- When filing an ALJ hearing request, you can request a [prehearing case review](#). Read more in the "Prehearing and On the Record (OTR) Reviews" section below.

## Submitting the iAppeals Request

- At the end of the iAppeals screen path, click the "Submit Appeal" button.
- If the applicant is not with you, you are permitted to submit the appeal as the authorized representative.
- After submission, select the link with "Personalized Cover Sheet" which lists all items sent as well as those items you may need to bring or mail to SSA.
- SSA will mail a copy of the appeal request to the claimant and authorized representative.

## What's Next?

- iAppeals will electronically submit all completed forms and attachments to SSA as one package.
- SSA will develop the case for other issues and consider good cause for late filing when necessary.
- SSA will forward the appeal request to the Disability Determination Services (DDS) or the servicing Office of Hearings Operations (OHO) as appropriate who will develop the case for other issues, such as new medical conditions, updated medical documentation, and worsening functional limitations.

## Setting the Manner of Appearance for ALJ Hearings

- After you submit a Request for Hearing by ALJ, OHO will mail you a *Notice of Ways to Attend a Hearing package* which provides two forms and information about how you can appear at a hearing:
  - Objection to Appearing by Audio or Agency Video (submit to SSA within 30 days if you object to having your hearing by audio/telephone and/or agency video)
  - Agreement to Appearing by Online Video (submit only if you agree to appear at your hearing by online video)
- To learn more about all of the hearing options, you can watch the video "[Ways to Attend Your Social Security Hearing Before a Judge](#)" or visit "[Hearing and Appeals](#)" on SSA's website.
- The four options for appearance are:
  - Agency video: from an SSA Office of Hearing Operations (OHO) office using agency video equipment (formerly "VTC");
  - Online video: from a private location using private equipment (formerly "MS Teams");
  - Audio: from a private location using a private telephone (formerly "phone"); and
  - In-person

# Prehearing and “On the Record” (OTR) Reviews

PRIOR TO THE ALJ HEARING

Once the Request for Hearing has been processed at OHO, both the representative and applicant will receive a notice indicating the case has been successfully transferred to the court’s Master Docket, where cases are screened. At this stage, representatives can request a Prehearing Case Review or an “On the Record” (OTR) review to avoid the need for a hearing. If the OHO office is not able to grant these requests, the applicant retains the right to a hearing. A request for an expedited hearing due to dire need can also be submitted.

## Prehearing Case Review

SOAR representatives can ask the Office of Hearings Operations (OHO) to refer the case back to DDS for a [Prehearing Case Review](#). Under this procedure, the Social Security Administration may only issue a revised determination if it is fully or partially favorable to the applicant.

There are four circumstances under which the ALJ may refer a case back to DDS:

- additional evidence is submitted
- there is an indication that additional evidence is available
- there is a change in the law or regulation
- there is an error in the file or some other indication that the prior determination may be revised

## Requesting a Prehearing Case Review

You can request a prehearing case review when filing a hearing request via iAppeals. Make a notation in the Remarks Section of the iDisability Report-Appeal about the reason(s) for which you are making the request. Be sure to upload all supporting documents! You can also request a prehearing review after a [Request for Hearing](#) has been filed and any time before the hearing is scheduled.

## Potential Outcomes

- If the revised determination is fully favorable to the applicant, the hearing request will be dismissed, and the decision forwarded to the SSA field office for processing.
- Generally, if the revised determination is partially favorable, the request for hearing will proceed unless all parties agree to a dismissal of the request.
- If the revised determination would be unfavorable, SSA will continue to process the hearing request.

## On the Record (OTR) Review

An OTR review request asks OHO to consider approving a claim based on the documentation in the record without appearing before the judge. Only the ALJ or Attorney Advisors at OHO can make an OTR decision. You can also request an OTR Review after a [Request for Hearing](#) has been filed and any time before the hearing is scheduled.

## Requesting an OTR Review

- The OTR request is simply a letter stating the Listing section that the applicant meets followed by a discussion of how the specific requirements of the Listing are met.

- No official form is required. See a sample OTR request at the end of this toolkit.
- The letter is similar to a Medical Summary Report (MSR) that the SOAR practitioner develops for an initial application. It should link the claimant's functioning to medical records and third-party reports.
- A SOAR practitioner requesting an OTR review should notify or remind the hearing office that the applicant is in "dire need" (e.g., experiencing homelessness, residing in shelter, eviction is pending) and provide some proof of the applicant's situation.

## Benefits of Successful Prehearing and OTR Reviews

- OTR decisions reduce long wait times for hearings and decisions, accelerating access to income and medical benefits.
- SOAR practitioners save hours of work when they do not have to prepare for and attend a hearing.
- SOAR practitioners gain credibility with and gratitude from ALJs whose time is also saved when cases can be decided on the record.

## Unsuccessful Requests

If the determination of the prehearing case review or OTR review is unfavorable the applicant retains the right to a hearing. You can still submit a request for an **expedited hearing due to dire need**. SSA considers a case to be "dire need" if the applicant has no shelter or is in imminent danger of losing shelter, or is without/unable to obtain food, medicine, or medical care. This can be a letter written to OHO. No official form is required.

# Developing a Theory of the Case

PREPARING FOR ALJ HEARINGS

## Overview of Case Theory

An important part of preparing for a disability hearing is to develop your theory of the case. A case theory fills in the blank to the statement, “Mr. Jones should be found disabled because \_\_\_\_\_.” Choosing and documenting case theories is an important skill for efficiently handling Social Security Disability claims at the hearing level.

## Importance of Case Theory

Developing a case theory is important because SSA cannot properly approve any case without legal justification. You must be able to identify and argue that legal justification by stating and proving the case theory. Further, you can develop a legal theory after completing a comprehensive interview (see “Direct Examination Questions” found in this toolkit, as well as the [SOAR Medical Summary Report \(MSR\) Interview Guide](#)). You should know critical information like age, education, and past relevant work to have a good idea of possible theories.

## Early Stages of Case Development

Developing a case theory requires that you have a working knowledge of the [Listings](#) and medical-vocational rules ([Grids](#)). Otherwise, it will not be possible to determine which Listing or Grid Rule might apply. So, be sure to review the Listings to determine whether the applicant has a condition that might be covered. With that in mind, it is crucial to understand and use the five-step sequential evaluation process. You will still need to evaluate the claim for other legal impediments (such as DAA, failure to follow prescribed treatment, etc.).

## Process of Elimination

- Confirm or eliminate the Grids as a possibility.
- Consider whether any Listings could apply.
- Assess other Step 5 theories including a combination of impairments or substantial loss of any of the “Mental Abilities Needed for any Job” found in the [SSA POMS](#), such as the ability to understand, remember, and carry out short and simple instructions, maintain concentration and attention for extended periods, or ask simple questions or request assistance.

## Developing a Case Theory

Can the applicant make a successful claim? What argument would you make? Questions to ask in the context of the Sequential Evaluation process:

- Step 1. Is the applicant working?
- Step 2. Is the impairment severe?
- Step 3. Does it meet or equal a listing?
- Step 4. Can they do their past relevant work?
- Step 5. Is there other work in the national economy? (See Grid Rules and other SSA Rules below)

## Common Case Theories

- The applicant meets all the requirements of a particular Listing.
- The applicant satisfies the requirements of a particular medical-vocational (Grid) rule.
- The applicant should be found disabled at step five of the sequential evaluation based on particular exertional and non-exertional impairments ([SSR 85-15](#)).

## Using the Five-Step Sequential Evaluation as a Basis for the Initial Interview

- Questions can be grouped into categories mirroring each step.
- Advocate should identify the Listing, medical vocational rule, or combination of impairments when formulating and documenting the case theory.
- Each of these descriptors provides information for the initial interview which should lead to a cohesive theory of the case, or alternate theory of the case, (e.g., “SOAR applicant meets Listing 12.04. In the alternative, they should be found disabled under Grid Rule 201.12”).
- This approach leads the applicant through a medical-legal dialogue designed to elicit information tailored to the five-step process.

## Develop Proof to Support Your Case Theory

Start gathering the evidence and breaking down the theory requirements. If it is a Listing(s) or Grid Rule, review the elements of legal theory and find description of proof in the record.

## Useful Social Security Rulings and POMS

These [Social Security Rulings \(SSR\)](#) and [SSA POMS](#) references can be helpful in supporting your case theory.

- Functional limitations: exertional and non-exertional: SSR 96-4p, 96-9p
- Grids: SSR 83-10, 83-11, 83-12, 83-14, 85-15
- Less than sedentary: SSR 96-9p
- Mental Impairments: SSR 85-15, 83-14, POMS- DI 25020.010

## Direct Examination Questions

PREPARING FOR ALJ HEARINGS

### Questions for Direct Examination

Below are some questions the Administrative Law Judge (ALJ) might ask the applicant. Reviewing these can help SOAR practitioners and applicants prepare for ALJ hearings.

#### Personal and Educational Background

- What is your full name?
- What is your birthday? How old does that make you today?
- Where do you live? With whom do you live?
- Are you married? Do you have any children?
- Do you live in a house or an apartment? What floor is it on?
  - Do you have to climb stairs to get to your apartment? How many?
- Do you live mostly outside?
- Where did you go to school? What grade did you complete in school? Why did you leave school?
- Can you read? Do you read the newspaper? What section of the paper do you most often read? How often do you read this section?
- Can you write?
- Can you do addition? Multiplication? Division?
- Did you attend any vocational school or program? When was that? How long did the program last? Was it full-time or part-time?
  - Did you later find a job involving this kind of training?
- Were you ever in the military? Did you get any special training there?

#### Work History

- Are you currently working? Why aren't you working now?
- When did you last work? Where was this? How long did you work there?
  - What was your position there and what were your duties? Please describe your duties in detail.
- Did you have a supervisor? What did your supervisor do?
- If you were not closely supervised, how were your duties explained to you and how much did these duties vary from day to day? Did you operate any machinery on your own, read any instruments, or take measurements as a regular part of your job?
- Could you still do this job? Why not?
- Have you ever seen a vocational counselor? What was the result of the visit?
- At the last job that you had, how much of your time were you standing? How much did you sit? How much did you work?
- Did you regularly lift or carry objects? How heavy were these objects?
  - Did you ever have to lift unusually heavy objects? How heavy were these objects? What was the heaviest object you regularly had to lift or pull on any of these jobs? How often would you have to do this?
- Did you operate any machinery or drive a car on the job?

- Did you use a small hand-tool? What tools did you normally use, if any?
- Does anything prevent you from using both of your hands? Both of your eyes?
- Does anything prevent you from concentrating through the 8 hours of a workday?
- Does anything interfere with your ability to deal with pressure on the job from supervisors or co-workers? Do you have any difficulties in accepting criticism from supervisors?
- Does anything interfere with your ability to remember simple/complex instructions or carry them out?
- Are you able to maintain attention to a simple task for at least 2 hours without needing a break or interruption?
- Does anything interfere with your ability to perform activities within a schedule? Are you able to respond appropriately to changes in your routine or work setting?
- Does anything interfere with your ability to be punctual in getting to work?
- Going back as far as 15 years ago, please tell us what jobs you performed, starting with the most recent.
  - As best as you can remember, how much sitting/standing/lifting/walking did these jobs require?
  - Did you operate any special kind of machinery on any of these jobs? Could you still operate this kind of machinery?
- Did you receive any special kind of training? Could you still perform this special kind of job training?
- What was the easiest job you ever had? Could you do it now?

## Medical Information and Treatment

- What health problems do you have?
- Tell us about all the medical treatment you have received.
- Do you presently have a treating physician? How long have you been seeing the physician?
- Where do you go for appointments?
- Have you seen any specialists? How many times? For what specific problems?
- Have you ever been hospitalized? When? How long were you in the hospital? For what reason?
- Has this medical problem recurred? When? How often?
- What medication, if any, do you take each day? How often do you take it? For each medication, please tell us how much you take each day.
  - Have you noticed any side effects from your medication?
- Do you continue to have symptoms from your condition, despite the medication?

## Mental Illness and Treatment

*Tip: Always follow-up with, "Tell us about it."*

- Give me some examples of things or activities that you find stressful or will bring on a panic attack?
- Do you ever feel anxious for no apparent reason?
- Do friends or family members tell you that your moods seem to change quickly and unpredictably?
- Do you ever find it difficult to think clearly or to organize your thoughts?
- Do you ever feel that people are talking about you behind your back?
- Do you ever feel that someone is watching you?
- Do you sometimes find that you get angry over nothing?
- Have you ever been told that you should receive help from a counselor or psychologist?

- Have you ever called a telephone hotline to talk about your problems or gone to a community mental health center?
- Have you ever been admitted to a hospital for a mental evaluation on an involuntary basis? On a voluntary basis?
- Has a doctor ever prescribed a tranquilizer or sedative for you? When? How often? Did you renew the prescription? Do you still take this medication?

## Traveling

- How did you get to this hearing today?
- How often have you left your home during the past month?
- When you go out, where do you go? Do you usually go alone?
- Do you have any emotional problems when you leave your home alone?
- Describe any difficulties you have with traveling outside the house.

## Walking/Mobility, Strength, Endurance

- How many pounds can you easily lift? How many pounds can you lift frequently?
- Do you use a cane or crutches? Do you ever use a wheelchair?
- Can you kneel, or pick up small objects from the floor?
- How is your balance? Do you ever lose your balance?
- Do you have any problems with walking? How long/far can you walk continuously in one stretch without stopping to rest? Can you walk without an assistive device (cane, walker)?
- Do you have any problems standing? How long can you stand continuously in one stretch of time?
- What happens if you try to sit too long?
- Do you have any difficulties bending at the waist? Stooping (bending the spine)? Kneeling (bending the legs)? Climbing the stairs? If so, please describe.
- Are you left- or right-handed? Does anything prevent you from using both of your hands?
- Do you have any difficulties using your arms?
- Do you have any difficulties working with hand tools, (e.g., screwdrivers, pliers)?
- How well can you perform buttoning your clothes? Picking up coins? Writing?

## Pain

- Tell us about the pain in your \_\_\_\_\_? (Tip: start at head and work down to toes.)
- What happened to cause you to have this pain? How long have you had the pain?
- Has there been any significant period since it started that the pain was in remission?
- What does the pain feel like? Is it tender to touch?
- Does it limit the amount you can bend? If yes, how much?
- Show us where this pain is located. (e.g., "Let the record reflect that the applicant is pointing to his low back at the beltline.")
- How many hours per day/days per month do you have this pain? How long does it last?
- What sort of things bring on this pain? What relieves it?
- What medication do you take for pain? How often and how much do you take? Does the medication make you sleepy, dizzy, or sick to your stomach?

- How severe is the pain? On a scale from 1 to 10, 10 being the most severe, how would you rate the pain?
  - Is it always the same intensity? If not, how often is the pain at each intensity?
- Is your pain affected by movement or activity?
- How has this pain affected your life?
- Is the pain better on some days and worse on others?

## Visual

- How good is your eyesight in the left/right eye? Does anything prevent the full use of both your eyes?
- Do you ever have any blurring of vision, or do you ever see double?
- Do you wear glasses for reading or for distance? Even with glasses on, do you ever have trouble reading?
- If blind or experiencing visual difficulties: Describe any difficulties that you have had because of being blind or having limited vision in the left/right eye.

## Obesity

- How much do you weigh? What is your height?
- Have you attempted in the past to lose weight? What have you tried in the past to reduce weight?
- Have you experienced any problems from being overweight? When did that start?
- Do you have problems moving or working? Do you feel any pain in your joints?

## Specific body parts

- Do you have problems with your knees or legs? Tell me about these problems.
  - Do your knees or legs hurt when you walk? When you sit? When you stand?
- Do you have problems with your back? Tell me about your back problems.
  - Does your back hurt when you walk? When you sit? When you stand?
- Do you have any problems with your feet, hands, or ankles? How often does it occur? When did it last happen? Can you walk when this happens?

## Functional Information

- Describe a normal day for yourself and how your condition affects you daily.
- How often do you cook for yourself, or who cooks for you? Do you have any difficulty in doing this? What kind?
- Do you make beds? Dust? Do the dishes? When you do not do these chores, who does? How long have you been unable to do these things?
- Do you go shopping? When you go, do you carry any bags? If you walk, how far away is the store? How long does it take you to walk to the store?
- Do you drive? How far do you drive? Do you have a driver's license? When was the last time it was renewed?
- How far can you walk? What happens if you try to walk farther than that?
- How often, if ever, do you use public transportation?
- Do you do your own laundry? How do you get to the Laundromat?

- Do you go to church? How do you get there? Do you have any problems sitting in church for one hour?
  - Do you belong to any clubs or church groups?
- Do you have any family or friends? Do you visit them? How often? Do they visit you? Do you stay connected by phone? How often?
- Do you watch TV? Do you follow what is happening or keep it on as background sound?
- Do you have any hobbies? How have your interests changed since your condition began?
- Do you read for pleasure? What do you read? Do you visit the library? How often?
  - Do you have any difficulty concentrating while you read? Do you lose your place, forget what you have read, re-read passages, or lose interest?
- Do you have trouble sleeping? What kind? What time do you go to bed?
  - How often do you wake up at night? What wakes you up?
  - Do you take medication to sleep? What kind? How much?
  - Do you sleep much during the day? How much?
  - Do you take regular naps during the day? At what time? For how long?
- How often do you go outside? How many times each week? Where do you go?
- Do you have any special routine or patterns you use when you go out to accommodate your medical conditions?

# Tips for Reviewing Unfavorable ALJ Decisions

## IDENTIFYING SPECIAL ISSUES

### Reviewing the Decision

Read the ALJ's decision to spot issues or errors which may warrant appealing the decision to the Appeals Council (AC). The AC can either remand or send the claim back to the ALJ to correct any errors. The AC may also decide to reverse the decision and allow the claim. First, review and record the type of claim, alleged onset date, and date last insured (if applicable), and confirm that it matches the information you have.

### Identifying Special Issues using the Sequential Evaluation

Use the steps in the sequential evaluation to identify special issues that could be grounds for an appeal of the ALJ denial. This process reveals some of the most common legal errors in the ALJ decision. If those errors could potentially alter the outcome of the decision, there is good grounds for appeal.

#### Step 1

- Did the ALJ find the applicant was engaged in SGA?

#### Step 2

- What conditions were found to be "severe"?
- Which were specifically found not to be "severe"?
- Were there any significant medical conditions documented in the record that the ALJ did not consider in the decision "severity" analysis at step two? If so, which ones?

#### Step 3

- What listings were considered? Why were they rejected?
- Were there any significant medical conditions which the ALJ did not consider under the "applicable listings"?
- Was the ALJ mistaken in the listing analysis?

#### Step 4

- Specifically, what was the ALJ's Residual Functional Capacity (RFC) finding?
- Did the ALJ fail to give weight to any favorable doctor opinions (e.g., RFCs or co-signed MSRs (Medical Summary Report))?
- What jobs were identified as past relevant work?
- Did the ALJ find the applicant capable of past relevant work?
- If the ALJ denied at step four, was the description of the requirement of the past relevant work accurate?
- Did the limitations in the RFC that the ALJ found still allow that applicant to perform all the documented job requirements of the past relevant work?
- Make a list of all the limitations that the applicant alleged, and/or which were found in doctor reports or RFCs. Compare the limitations on that list to the ALJ's RFC findings. Are there any discrepancies?
  - If yes, did the ALJ specifically provide a reasonable explanation in the decision?

- Why were the alleged limitations rejected (not just a boilerplate rejection with form language)?
- For each favorable doctor opinion which the ALJ failed to give weight, did the ALJ give good, specific reasons for rejecting the opinions (not just boilerplate again)?
- Did the ALJ consider all the factors both for and against giving the opinion weight?

## Step 5

- Did the ALJ use a medical vocational rule?
- What jobs (if any) did the ALJ find that the applicant could do?
- Were there any significant, non-exertional impairments? If yes, did the ALJ use a vocational expert (VE) in the case? (If not, consider [Sykes v. Apfel](#))
- Did the limitations in the hypothetical questions the ALJ used with the VE match those in the ALJ's RFC finding?
- Did the jobs identified by the VE seem reasonable, given the other findings?

## Additional Special Issues

- Are there any special issues like drug or alcohol materiality or failure to follow prescribed treatment?
  - Compare the findings and analysis of drug/alcohol materiality or failure to follow prescribed treatment with the regulatory requirements. Did the ALJ get it right?
- If the ALJ finds the claimant "not credible," compare the stated reasons to the facts in the record on hearing notices.
- Are there any discrepancies or misrepresentations by the ALJ?

# SOAR Collaboration with SSA's Office of Hearings Operations (OHO)

SUGGESTIONS FOR WORKING WITH YOUR OHO

## OHO Overview

The Social Security Administration's (SSA) Office of Hearings Operations (OHO) directs a nationwide field organization staffed with Administrative Law Judges (ALJs) who conduct impartial hearings and make decisions on appealed determinations involving Old-Age, Survivors, and Disability Insurance benefits (Title II, SSDI) and Supplemental Security Income (Title XVI, SSI) payments.

## The Problem and SOAR Solution

OHO offices maintain a master docket system that contains all requests for hearings and remanded claims. Getting the case ready for the hearing is time-consuming for OHO staff. "Pulling" or "work-up" is the process of preparing a disability case file for a hearing. Hearing office staff reviews the electronic folder, identifies the relevant documents, and organizes those documents for the ALJ to consider in making a decision.

Many claims awaiting a hearing date are what SSA classifies as "critical." [OHO defines a case as "critical"](#) in the following situations:

- Terminal illness;
- Veterans with permanent and total disability rating from the Department of Veterans Affairs;
- Military casualty/wounded warrior case;
- Compassionate Allowances
- Dire need case; and
- Potentially violent

SOAR applicants, by definition, are "critical" cases because they meet, at minimum, the "[dire need](#)" designation. Therefore, SOAR providers can assist OHO offices with the special processing of these critical cases and, in return, improve OHO's average processing times and ease workload burdens.

## Unique Role of SOAR Representatives

SOAR providers can be a great resource to OHO staff by:

- Submitting fully developed claims for "critical" applicants, which will ease OHO's burden of organizing and developing claims
- Working with applicants to obtain the necessary evidence for their file
- Consistently being prepared for hearings or an "[On the Record](#)" (OTR) reviews
- Maintaining effective communication with the applicant and OHO staff
- Assisting applicants with obtaining an attorney or other representative so OHO does not need to postpone the hearing to give the applicant a chance to get a representative

## Gaining Local OHO Involvement

Involving local OHO staff (e.g., Hearing Office Director, Group Supervisor or Chief ALJ) in your local steering committees and/or SOAR practitioner meetings can be a fantastic way to share how SOAR collaborations can be a win-win! You can share information on specific “critical” cases, better understand OHO office workload and average processing times, and create a process for submitting SOAR “critical” claims.

- [SOAR Directory](#)
- [Hearing Office Locator](#)
- [SSA Office Locator](#)

Once you connect to the OHO office, you will want to send information about SOAR. Here are a few infographics to consider in addition to your local SOAR initiative information.

- [SOAR Overview](#) (to provide an overview of the SOAR initiative)
- [SOAR Outcomes](#) (to share approval rates and processing times)
- [Getting Involved with SOAR](#) (to demonstrate the elements of the SOAR model and process)

## OHO Structure

Each OHO Regional Office (RO), under the direction of the Regional Chief ALJ, is responsible for executing the regional hearings process. It provides direction, leadership, management, and guidance to RO staff and the regional hearing offices. Each hearing office has a management team that includes the Hearing Office Chief ALJ (HOCALJ) and Hearing Office Director, who supervise, plan, organize, and control hearing office operating activities. OHO hearing offices maintain a master docket system that contains all requests for hearings and remanded claims.

## Benefit to OHO and SOAR Applicants

Access to SSI/SSDI can be a significant tool in building resiliency and recovery from both serious mental illness and homelessness. Without the support of a SOAR provider, it can take as long as 1-3 years to obtain approval for SSI/SSDI. During this time, applicants experiencing homelessness often get lost in the process and require a great deal of community support simply to survive. SOAR collaboration with your OHO office can help ease their backlog and workload issues while improving access to expedited decisions for SOAR applicants.

## Reference Materials

### EXTERNAL RESOURCES AND STATISTICS

#### Important Links

- [SSA's Office of Hearing Operations \(OHO\)](#): Information about SSA's hearings and appeals.
- [SSA's Best Practices for Claimants' Representatives](#): Learn more about representing claimants at ALJ hearings, including information about submitting evidence, pre-hearing briefs, OTR decision requests, Dire Need and Terminal Illness Requests, and scheduling hearings, etc.
- [SSA Program Operation Manual System \(POMS\)](#): Primary source of information used by SSA employees to process claims for Social Security benefits.
- [Hearings, Appeals, and Litigation Law Manual \(HALLEX\)](#): HALLEX serves as a reference tool for ALJs and other staff involved in the adjudication of claims and covers various aspects of the administrative law process, including rules for conducting hearings, evaluating evidence, making decisions on benefit claims, and processing appeals.
- [SSA Regulations](#): Information on SSA's rules, regulations, and law.
- [Merck Medical Dictionary](#): Provides comprehensive information on medical conditions, diagnoses, treatments, and medications.
- [Dictionary of Occupational Titles \(DOT\)](#): A publication developed by the U.S. Department of Labor that provides standardized descriptions of various occupations in the United States.
- [Vocational Experts Handbook](#): The role of Vocational Experts (VEs) at hearings and guidance on the cross-examination of VEs.
- [Medical Experts Handbook](#): The role of Medical Experts (MEs) at hearings and guidance on the cross-examination of MEs.
- [National Organization of Social Security Claimants' Representatives \(NOSSCR\)](#): A professional organization dedicated to education and advocacy. Also, a source for referrals to Representatives for appeals. Click on "Lawyer Referral Service."
- [National Association of Disability Representatives \(NADR\)](#): A professional Social Security Claimants Representatives organization. Also, a source for referral to Representatives for appeals. Click on "Find a Representative."

#### Social Security Administration Statistics

- [SSA State Agency Workload Data](#): This dataset includes monthly data for SSA disability cases referred to the state agency for a disability determination. Includes initial, reconsideration, and continuing disability review (CDR) cases, with breakouts by claim title (SSDI, SSI). Specific data elements for each state are receipts, end of month pending counts, determinations, allowances, and allowance rates.
- [SSA Disability Claim Data](#): Includes fiscal year data for initial claims for SSA disability benefits referred to a state agency for a disability determination. Specific data elements for each year and state include receipts, determinations, eligible population, and determination rates. The data may be used to examine disability application filing trends by time and by state, state agency workloads, and disability claims outcomes.
- [Average Wait Time Until Hearing Held Report](#): A presentation of the average time (in months) from the hearing request date until a hearing is held for claims pending in the OHO hearing offices. Allows users to estimate the amount of time they may have to wait for a hearing to be held.

- [Hearing Office Workload Data](#): A presentation of four key workload indicators (pending, receipts, dispositions, and average processing time) for each hearing office.
- [ALJ Disposition Data](#): A listing of hearings completion data, by name, of individual Administrative Law Judges (ALJ) for all ALJs in OHO. The data includes hearing office name, total dispositions, decisions, allowances, denials, and fully favorable or partially favorable decisions.

## Sample “Good Cause for Late Filing” Request

### YOUR LETTERHEAD

Re: Jane Doe  
DOB: XX/XX/XXXX  
SSN: XXX-XX-XXXX

[Today’s Date]

Social Security Administration  
2630 Another St., SW  
Your City, YY 33333

To Whom It May Concern:

I have enclosed an [SSA-561: *Request for Reconsideration* or SSA-501: *Request for Hearing*] for Jane Doe. In addition, Ms. Doe has signed an SSA-1696: *Appointment of Representative* form and SSA-8274: *Authorization to Disclose Information*, which are also enclosed.

Ms. Doe’s [*initial application* or *reconsideration*] was denied on [insert date]. She is only now filing for the appeal because she did not know her application status. Ms. Doe has been experiencing homeless for over a year. She has been living on the street and only recently began receiving services. Her disability has caused her to refuse any sort of help up until now. She did not have a reliable mailing address and did not receive the last few notices from SSA. She recently met and began speaking with a homeless advocate who asked us to look into her application. We believe that this is *good cause* for accepting her [*Request for Reconsideration* or *Request for Hearing*.]

I will serve as her representative throughout the application process, and all future deadlines will be met.

If you have any questions, please do not hesitate to contact me at (555) 555-5555. Thank you for your assistance and consideration.

Sincerely,

Ms. SOAR Case Manager, LMSW  
SOAR Benefits Specialist  
Your Agency

## Sample "On the Record" Request

### YOUR LETTERHEAD

Re: John Smith  
DOB: XX/XX/XXXX  
SSN: XXX-XX-XXXX

[Today's Date]

#### VIA Electronic Records Express

The Honorable Mary Martin  
Office of Disability Adjudication and Review  
Chief Administrative Law Judge

Dear Judge Martin:

I am respectfully requesting an on the record review regarding Mr. John Smith's claim for Title XVI benefits. In support of this request the following medical documentation has been uploaded to the applicant's electronic folder via Electronic Records Express on this date.

- Mental Impairment Questionnaire, Dr. Judy Jones, Grady Memorial Hospital, dated 10/1/23 (3 pages)
- Collateral Letter on Functioning, Jane Adams, Advanced Psychiatric Nurse Practitioner, The Open Door Community, dated 10/5/23 (2 pages)
- Collateral Letter on Functioning, Jon Adams, Outreach Case Worker, The Open Door Community, 10/9/23 (2 pages)
- Grady Memorial Hospital, dates of service, 9/20/23-10/25/23 (25 pages)

Mr. Smith is 54 years old with a master level degree in mathematics and past work as a high school math teacher. He has been diagnosed with Schizophrenia, unspecified, since early adulthood. Mr. Smith has been experiencing homelessness, living on the street for the last 10 years, and has been hospitalized and incarcerated countless times due to the severity of his symptoms and inability to function at even a basic level. Mr. Smith's mental impairment is so severe that he is unable to care for his daily needs. He requires an intensive support system to remain stable and is unable to function outside a highly supportive living arrangement. Currently, Mr. Smith is receiving 24/7 supportive services from a team of homeless outreach workers and nurse practitioners who tend to his nutritional, hygiene, and medical needs. Mr. Smith's cognitive functioning has deteriorated to the point where he is unable to perform 2-step tasks, adding single-digit numbers (Exh 5F). Further, the medical records show that Mr. Smith lacks insight into the severity of his mental impairment, as evidenced by his desire to become a college math professor, despite the multiple psychiatric evaluations with findings of cognitive deterioration to the point where he is unable to perform serial 7s (Exh 12F).

Mr. Smith's impairment meets Listing *12.03 Schizophrenia spectrum and other psychotic disorders*. As documented in the attached medical records from Grady Memorial Hospital, he presently experiences the following symptoms: psychosis, hallucinations, delusions, disorganized speech and cognitive deficits.

Mr. Smith has marked limitations in all four areas of mental functioning, as evidenced by the attached *Mental Impairment Questionnaire* completed by Dr. Judy Jones, the treating psychiatrist, and collateral letters from

outreach case workers and nurse practitioners at The Open Door Community (Exh 3F, 4F and 10F). Mr. Smith has marked difficulties in remembering and applying information as evidenced by his inability to perform 2 step tasks, adding single-digit numbers and serial 7s on exam (Exh 5F and 10F). He has marked difficulties in interacting with others including aggression and violence which have led to multiple incarcerations and hospitalizations (Exh 4F, 5F and 10F). Mr. Smith has marked difficulties in maintaining concentration and persistence as evidenced by becoming easily distracted and cannot stay in one place for very long without becoming very anxious (Exh 4F and 10F). Mr. Smith has marked limitations in adapting or managing himself as evidenced by his inability to properly use a restroom, cook or clean for himself, care for his personal hygiene needs, or adapt to residing in transitional housing for an extended period (Exh 4F and 10F). Further, Mr. Smith has a thirty-year history of being diagnosed with Schizophrenia, unspecified, which has led to job and housing losses despite medical treatment and psychosocial support (Exh 4F and 10F). He has been living on the street except for the countless times he has been arrested and incarcerated or involuntarily hospitalized for aggression, violence, hallucinations and disorganized thoughts. Mr. Smith has only been able to adjust to residing in a transitional housing setting for a few months at a time before his symptoms interfere with his ability to sustain stable housing.

We believe that Mr. Smith should be found disabled at the third step of the Sequential Evaluation process because his impairment satisfies the requirements of Listing *12.03 Schizophrenia spectrum and other psychotic disorders*. Please review the attached *Mental Impairment Questionnaire* recently completed by Dr. Jones, treating psychiatrist, which indicates marked limitations on 2 functional areas, and extreme limitations in 1 functional area. Further, the report indicates that Mr. Jones would require support in managing his benefits. We respectfully request that his application be reviewed on the record so that Mr. Smith can begin receiving benefits and access the intensive, 24/7 supportive housing and treatment services that he needs to end his homelessness.

If you have any questions, please do not hesitate to contact me at (555) 555-5555. Thank you for your assistance and consideration.

Sincerely,

Jane Doe, LMSW  
SOAR Benefits Specialist  
Your Agency