

HOW TO REPRESENT YOURSELF AT A SSI/SSDI HEARING

Request Your Records Immediately

The most important thing you can do for your case is to request your medical records and submit them to the hearing office (OHO). Strong cases can be denied if the judge does not get all of the medical records.

- Request medical and psychiatric records from the **records department** of your hospital/clinic
- Request a Physical or Psychiatric Assessment Form directly from the doctor or psychiatrist
Forms available here: <https://nylag.org/units/public-benefits/projects/disability-advocacy>
- Request physical therapy and pain management records from the records department
- Request inpatient and ER records, including x-rays & MRIs, from the records department
- Request letters from prior employers regarding accommodations or other help they gave you
- Request letters from your family members regarding your symptoms, lifestyle changes, and any assistance they give you (e.g. help you shop, help you with laundry, make meals, etc.)
- Request school records, IEPs, psychosocial assessments, speech and language records, IQ test results, and other testing results for children and young adults

Free Access to Your Medical Records

Your doctors cannot charge you money when you ask for your medical records if you tell them:

“I am requesting the records for the purpose of supporting my claim or appeal for Supplemental Security Income and/or Social Security Disability Insurance benefits.”

New York State’s Public Health Law Secs. 17 and 18 now state that no charge may be imposed for providing, releasing, or delivering copies of patient information where requested for the purpose of supporting an application, claim or appeal for any government benefit or program. *See also* Mental Hygiene Law Sec. 33.16. If your doctor has these records in electronic form, you can ask for the records on a CD or in some other electronic form. This law went into effect on September 13, 2017.

You can get a pdf copy for your doctor here: <https://www.nysenate.gov/legislation/bills/2017/s6078#>

Scheduling & Submitting Evidence

SSA should mail you a hearing notice at least 75 days before the hearing unless you agree to waive this advance notice. Before you sign anything waiving (giving up) your rights, consider the consequences.

If you go to the hearing office for your hearing and the judge decides to adjourn (postpone) the hearing, the office might ask you to sign a paper waiving this 75 day notice. You don’t have to sign it if you think you’ll need 75 days’ notice. **If you already waited so long, why would you need that extra time?**

Well, if you need time to request your medical records and/or to find an attorney, you might not want to waive your right to 75 day notice. **Medical records often take 2-3 months to get.**

You must submit your evidence, or inform OHO about missing evidence, at least 5 business days before the hearing. Unless an exception applies, the judge may refuse to consider evidence submitted later.

From the date you request a hearing until the decision is made, you must make sure to tell the hearing office about new treatment, new doctors, work activity, and other changes in your case. If you don’t keep OHO updated, then at the hearing the judge might refuse to look at these records.

If you want the judge to request records that you cannot get, you can ask for a subpoena. Subpoenas must be requested in writing at least 10 business days before the hearing date. Call OHO to learn how.

What Happens at the Hearing?

The judge will ask you questions about your medical condition and treatment, your symptoms, your education, and your work history (for the last 15 years). You should have given OHO this information before the hearing. Make sure to tell the judge any problems you would have performing job duties or household tasks due to your conditions. There might be a medical or vocational expert at the hearing.

How does SSA decide if I am disabled? ****SSA's Five Step Evaluation Process****

When SSA decides if you are disabled as an adult, they look at your ability to work. They try to see if you can do any of your old jobs (from the last 15 years) or any other job, even a sitting job. To be found disabled you have to be unable to work full-time because of your medical or psychiatric problems.

Step 1: Are you working?

If you are working and earn more than \$1180 a month (in 2018), you are performing “substantial gainful activity” and SSA will generally find you not disabled. *If you aren't making \$1180, go to Step 2.*

Step 2: Do you have a severe impairment?

Your condition must interfere with your ability to do work duties and household tasks. *If yes, go to Step 3.*

Step 3: Is your medical condition found in SSA's Listing of Impairments?

The listings are a set of rules that cover the most common medical and psychiatric conditions. They describe the medical test results and symptoms you need to have to be found disabled at this step. They are organized by body system. Your condition will need to be very serious to meet the requirements of one of the listings. Go here:

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

You can meet, equal (come close) or have a combination of impairments that are medically equal to one of SSA's listed conditions. *If yes on Step 3, you are disabled. If no, go to Step 4 (for adults only).*

For children, there is also functional equivalence in addition to child listings. The child must have 2 marked limitations or 1 extreme limitation in these 6 domains of functioning: Acquiring and Using Information, Attending to and Completing Tasks, Interacting and Relating with Others, Moving About and Manipulating Objects, Caring for Yourself, and Health and Physical Well-Being.

Step 4: Can you do your past relevant work?

SSA determines your Residual Functional Capacity (“RFC”) to see if you can do any of the jobs you had in the last 15 years. Your RFC describes your current ability to do the physical and mental activities required on the job. It is based primarily on medical evidence but may also include your description of your symptoms and how those symptoms make it hard for you to perform certain work duties. If a prior employer, co-worker, or family member knows about your problems working, get a letter from them too.

TIP: A letter or form completed by your treating physician or psychiatrist can help to accurately show your restrictions. You should also get your medical or psychiatric records from that doctor.

All jobs have exertional and non-exertional demands listed in the Dictionary of Occupational Titles (DOT). Exertional are strength demands, such as sitting, standing, walking, and lifting/carrying weight.

Non-exertional demands cover many areas including manipulative (fingering, handling), postural (squat, stoop), environmental (fumes, dust, heat/cold), mental demands (concentration, memory), and others.

If you can still perform your past work from the last 15 years, then SSA will find you not disabled.

However, if you cannot do your past work, then go to Step 5.

Step 5: Can you do any other type of work?

If you cannot perform your past relevant work, SSA determines if you can adjust to other work. SSA considers your residual functional capacity, your age, your education, your work experience for the past 15 years, and any transferable skills from your past work. The older you are the more difficult it is to find other work you can do, especially if you have never done any sedentary (sitting) work. For example, a person with a history of construction work who is now 50 years old will not be expected to find a job as a secretary because it would be too hard to vocationally adjust to such a different field of work at this age.