

Parent Brief

Promoting effective parent involvement in secondary education and transition.

September 2003

Supplemental
Security Income (SSI)
Program
Part 3 of 3

Supplemental Security Income: Your Right to Appeal

The following information about Supplemental Security Income (SSI) appeals was written for young adults with disabilities, parents, and/or advocates.

If You Were Denied SSI

Many people are denied SSI benefits when they first apply. Disability Determination Services reports that, nationally, 62% of the original applications are denied. Some of the initial denials are overturned through the appeals process. Four levels of appeals are available:

- Reconsideration is the first level of appeal. Your file will be sent back to the Disability Determination Services in your state. The information in your file will be looked at by a new adjudicator(s). Approximately 14% of the appealed cases are overturned, and benefits are allowed.
- A hearing before an administrative law judge (ALJ) is the second level of appeal. At this level of review approximately 60% of the cases are overturned and benefits allowed.
- A review by the Appeals Council is the third level of appeal. Of the 40% of appealed cases that are not overturned at

This is the third in a series of three Parent Briefs addressing Supplemental Security Income. The first is titled SSI: A Bridge to Work; the second, So You Have Decided to Apply. All three are available from the National Center on Secondary Education and Transition.

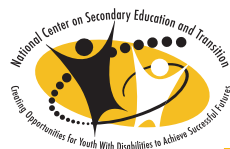
the hearing level, only 18% appeal at this third level. At this level, the Appeals Council will carefully review the case or return it to the same or a different ALJ for further action, which could include another hearing and a new decision. About 27% of the cases appealed at this level are sent back to the second level for further action.

- Federal Court action is the fourth appeal. Because this appeal is costly, appeals are rarely pursued at this level.

Most people who appeal are granted reversals at the first and second levels of appeal. Before appealing, make sure that the basic financial eligibility requirements are met. If financial eligibility is met and the disability limits or restricts the ability to work, it is advantageous to appeal. As the above statistics indicate, a new decision at appeal levels 1-3 can result in a favorable decision.

What Are Some of the Common Reasons for Denial?

The application forms are lengthy and call for many details. If the application sent to Disability Determination Services (DDS) was incomplete, it is likely to be denied. If this is the case,



This publication is a collaborative effort of the National Center on Secondary Education and Transition (NCSET) and PACER Center.



Applying for Benefits

the appeals process allows applicants the opportunity to provide more detailed information. Some common reasons for denial include:

The information was not complete: The Social Security Administration (SSA) will request information about your limitations and restrictions due to a disability from doctors and other people who are familiar with the applicant. SSA needs all of your doctors' names, addresses, and telephone numbers as well as the contact information from other people who know about your disability and limitations. These may include teachers, job coaches, employers, and friends.

SSA does request a detailed description of your day-to-day activities. This should stress how your disability limits and restricts your ability to work. It is important for the people sending information to SSA or DDS to understand the need to provide information that describes your limitations or restrictions for work and not focus on your strengths. Have someone review your application to make sure it is complete.

The doctors' information was not specific to the disability and work limitations: Your doctor must provide specific information about your disability and how it limits the ability to participate in the workplace.

The information about work experience did not adequately describe the limitations in performing work tasks: DDS will need a detailed description of all the equipment, assistive technology, services, supports, and accommodations you use, as well as detailed information specifying the ways that your disability affects your ability to perform tasks at work.

Later sections of this brief will provide specific examples to illustrate some of the reasons for denial. It will also outline how the appeals process can help individuals obtain a favorable decision from SSA/DDS.

Provide Complete Information About Your Disability

The information submitted to SSA/DDS should include a clear description of the disability and functional limitations. Some examples include:

- If you have a physical, neurological, or sensory disability, document information such as: seizure length and frequency, limitations in mobility, balance, vision, hearing, fatigue, chronic pain, and reduced stamina.
- If you have a cognitive disability, document information such as: difficulty focusing, carrying out tasks independently, understanding directions, reading, writing, spelling, calculating, making good judgments, and memory.
- If you have an emotional disability, document information such as: mood swings, anxiety attacks, comprehension, and articulation.
- If you have a communication disorder, document information such as: limitations in speech, comprehension, and articulation.

If the information on an application is incomplete, SSA may contact you to obtain the needed information.

The SSI Appeals Process

If you receive a letter from SSA denying your application, you may appeal that decision. You must respond within 65 days from the date on the letter, or 60 days from the date you actually received the letter. If the letter was forwarded to you, or in some other way delayed so you are unable to respond within 65 days of the letter's date, you can still file an appeal, but you may be required to verify when you actually received the letter. Directions on how to appeal will be included with the notification. Your first step is to state in writing that you plan to appeal the decision and to mail that statement to the address on the denial letter.

At each level of appeal you should request a copy of your file and review all information to understand why the denial was made. Request that information as soon as possible, and check to see if it is complete and accurate. You may submit any additional information on your disability at any level of the appeals process. You can also have someone represent you at all levels of appeal.

1st Level—Reconsideration

Within 60 days of receiving SSA's initial denial, a written request for reconsideration must be sent. All of the documentation will be reevaluated by a disability examiner who was not part of the initial determination.

At this level the reversal rate is 14% (about one in seven appeals are granted). SSA will send written notification of the reconsideration decision. The reconsideration level must take place prior to a hearing before an ALJ, except in prototype states where the claimant goes straight to the hearing before the ALJ. (SSA has eliminated the reconsideration step in 10 "prototype states"—Alabama, Arkansas, California, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania—to see if this improves the application process.)

2nd Level—The Hearing

If the reconsideration is denied and you wish to appeal, the next step is the hearing before an ALJ. A hearing must be requested within 60 days of receiving the denial. It is important to attend the hearing unless a written statement is provided to explain why a person cannot attend. If that occurs, a judge will make a decision based on the information from the reconsideration level and any new information that may have been provided.

It may take from three months to a year to have a hearing. Each person will receive a date, time, and place. This hearing can be postponed due to illness, transportation, or availability of witnesses.

Anyone can bring an advocate, witnesses, family members, or have a representative such as an attorney at the hearing. A witness can be a co-worker, physician, or anyone who can explain the effect of the disability on work. Before the hearing, make sure that all medical records are complete.

The SSI Appeals Process (cont.)

Other people at the hearing will include the court reporter who will record the proceedings, and medical or vocational experts if the judge requests their help in making a fair decision. There is no jury or spectators. There is no attorney for SSA and therefore no cross-examination. The hearing usually lasts about one hour and a written notice of the decision will be sent within eight weeks. This level has a reversal rate of approximately 60% (three out of five appeals are granted).

3rd Level—Appeals Council Review

If the appeal is denied at both the reconsideration and hearing levels, there is another level of appeal. This is a request for a review by the Appeals Council. A request must be submitted within 60 days from the date of the hearing denial. Of those reviewed by the Appeals Council, 27% are sent back to level 2 to be reheard.

The role of the Appeals Council is to review the ALJ's decision. No one besides council members are present at this level. The council will review documentation and the judge's decision and either make a decision or send it back to the ALJ for a second hearing. This could

mean that a different judge would hear the appeal. A written statement will be sent regarding how the appeal will be handled.

4th Level—Federal Court Action

If the appeal was again denied, a lawsuit with a Federal District Court can be filed within 60 days. It is important to have an attorney at this level of appeal. The Federal Court will review all the information provided and make a decision without any future hearings. It is also possible to bring an appeal to the Supreme Court. This level of appeal is very costly and rarely done.

Why Appeal?

It is advantageous to pursue the appeals process if an application is denied. The process has benefited many people who have been denied. It is also important to understand that even if an application and appeal are denied, anyone can reapply for SSI at any time in the future if the SSI income and disability eligibility requirements are met.

Remember, if your SSI application is denied, you have a right to appeal. The process is set up to protect you—USE IT.

Example 1: Additional Information Needed

Chad had done some assembly of paper products while still in school. He found the part-time work enjoyable and liked earning his own spending money. Since he was good with his hands, the work coordinator at his school suggested that assembly work would be a good place to start when he graduated from high

SSA arranged a medical consultation for Chad to provide more information on his disability. Because of this, he received a favorable decision from SSA and did not have to go through the appeals process.

school. Chad was hired as a full-time worker at a local manufacturer a short distance from home.

He was not on the job long before his supervisor took him aside and warned him about his late arrivals and lack of attention on the job. Chad said he would try harder. However, he continued to have trouble getting to work on time and found it hard to focus. Often his mind would wander while waiting for the bus. He would not see the bus go by, or he would ride past his bus stop and fail to get off for work or home. He did not participate with co-workers during break periods or keep up with old friends. When in a group, Chad sat to the side and faced away from the activity. At his supervisor's request, Chad consulted with his family doctor, Dr. Stevens.

Dr. Stevens noted Chad's withdrawal and anxiety but did not relate this to Chad's difficulty at work or diagnose this as depression. He believed a depression or mental illness label might discourage and depress Chad even more. Instead, Dr. Stevens urged Chad to go out with

friends and join groups that share his interests. He believed Chad could break out of his depression by finding more enjoyable activities.

Chad received three warnings from his supervisor because of tardiness, absences, and poor attention to details. After each warning, Chad would improve for a few days but lacked the ability to sustain the improvement. Chad's problems kept expanding in his mind, and he became totally engrossed in his problems. His supervisor again took him aside and stated he had no choice but to terminate him.

At home, Chad stayed in his bedroom, seldom dressing, bathing, or coming out to eat. His parents could not cheer him up. They were worried and knew Chad's problems were more than losing his job. They feared that his current emotional state would interfere with any future employment opportunities. Because of this, they believed Chad could qualify for SSI.

Chad's parents helped him apply for SSI. The SSA requested medical reports from Dr. Stevens. Soon after, Chad received notice from SSA explaining that they did not have complete medical information concerning his disability and how it interfered with his ability to work. At SSA's expense, a consultative examination (CE)

Providing more information can avoid the appeals process.

was scheduled with a psychiatrist, Dr. Forest. SSA requests a CE only when there is insufficient evidence to decide a claim. It is very important that you go to a CE. If you do not go, the claim may be denied due to insufficient evidence.

Example 1: Additional Information (cont.)

Chad's parents accompanied him to the scheduled appointment and participated in the meeting. It was difficult for Chad to articulate his feelings to the doctor. He told Dr. Forest that he saw no point in living. His parents added some details about Chad's difficulties in keeping a job and his behavior at home and at work. Dr. Forest said that he would submit his report to SSA.

Three months later Chad learned that he was eligible for SSI. With additional medical information provided by Dr. Forest, Chad's application for SSI benefits was approved, and he did not have to start the appeals process.

In the meantime, Chad saw a private psychiatrist who diagnosed him with severe depres-

sion and began a treatment plan. During the period when Chad could not work because of his disability, SSI benefits provided him with some financial security and medical treatment for his depression (Medicaid). When Chad returned to work almost two years later, his financial benefits from SSA were reduced. He continued to receive the Medicaid, necessary to pay for his prescription drugs, as well as therapy appointments and other medical needs. His family supported him during reoccurring periods of depression. Chad also developed strategies for keeping his job by requesting accommodations from his supervisor, such as flexibility in work hours and a leave of absence when necessary.

Describe How Your Disability Affects Employment and the Supports Required to Maintain Employment

Current transition programs provide many supports to enable students with disabilities to work and have positive learning experiences, as well as develop good career goals. Reports from teachers, work-experience counselors, employers, and parents usually emphasize the individual's strengths without describing any of the limitations and supports utilized. Information on all assistance being provided to a person with a disability and the employer should be noted on the SSI application. If there are built-in supports or job coaches providing services on a regular basis, those services need to be listed in detail, such as: interpreters, assistive technology, flexible hours, work-behavior guidance, co-worker and/or employer support, limited duties, rest periods, special transportation, adapted equipment and devices, alternative communication methods, and others. See Example 2 (next page) and Example 3 (page 9).

Example 2: Reconsideration

Example 2: Reconsideration

Illustrated below is a situation where the applicant, Kara, was denied SSI benefits when she first applied. She and her parents notified SSA of their intent to appeal. They submitted additional information on how her disabilities affect her ability to work and on the supports she needs to succeed in the workplace. With this new information, Kara received a favorable determination.

During Kara's school transition program, when she was 17, she had the opportunity to work at a fast-food restaurant. She could perform preparatory duties such as mixing coleslaw, dispensing foods into appropriate containers, and labeling the containers. Kara voluntarily assisted her co-workers when they fell behind by cleaning up and sanitizing areas. She was good at helping out when things got busy and liked to keep the work areas clean.

Kara had a brain injury that affected her speech, learning, and balance. Her speech was not easily understood. She could walk for short distances despite an uneven gait. She had short-term memory problems that made it difficult for her to follow a series of instructions. Kara was afraid of the stove and could not carry or lift heavy things. The manager of the fast-food restaurant was familiar with disability issues and worked with Kara's job coach. He structured Kara's work activities, simplified instructions, and used pictures on index cards to remind her of task order. Kara's co-workers also helped. They noticed when Kara needed assistance, and frequently joked and talked to her as they learned to understand her speech.

The reversal rate at the reconsideration level is approximately 14%.

Six months later the manager was transferred. The new manager liked Kara but could not understand her speech. He was concerned about her balance and feared she might hurt herself by bumping into something hot. If he felt she was too close to the stove, he would physically move Kara by taking her by the shoulders. Kara was uncomfortable with the physical intervention and started to fear his presence. She became withdrawn at work and stopped interacting with her co-workers. Kara sensed her supervisor's disapproval of her work, and this increased her anxiety, making it even more difficult for her to talk.

The manager attempted to communicate with Kara about her performance, but Kara started to cry when he interrupted her reply. She pushed a tray of prepared food to the floor and retreated to the storage room. Her job coach tried to resolve the misunderstanding between the manager and Kara, but Kara refused to return to work.

Kara had not been on SSI as a child because her parent's income was too high. Now that she was almost 18, her parents decided to fill out the application on her behalf.

Example 2: Reconsideration (cont.)

Kara's doctor described her range of motion as "better than might be expected" for her disability. He noted limitations for work regarding lifting and heights, but did not describe additional difficulties she might experience if employed. He alluded to her communication problems, but because he had known her for many years and understood her adequately, he did not go into any detail. **Kara's application was denied because it did not contain adequate information about how her disability affected her ability to work.**

After the denial, Kara's parents decided to appeal for **reconsideration**. They submitted additional information from their observations of Kara concerning her communication difficulties and behaviors, such as tantrums and crying when she was feeling stressed. They included information on her short-term memory

loss which made it difficult for her to follow oral or written directions. Her parents also contacted Kara's job coach. He wrote up the supports Kara needed at work and explained her difficulties in staying motivated on a job without structured, positive reinforcement from her employer. Since Kara was planning to remain in the school transition program through age 21, her job coach was confident that other jobs could be found for her. He emphasized that Kara would require continued supports from employers, co-workers, and job coaches in order for her to succeed. Kara's parents also gave

SSA permission to contact her former supervisor. Although he did not have time to give a lot of details, what he shared with SSA helped further explain Kara's limitations in the workplace.

This additional information on Kara's work behavior was submitted and she received a favorable determination at the reconsideration level.

The second level of appeal, which is a hearing before an ALJ, has a reversal rate of 60%.

Related resources available online:

The two previous briefs in this series, *Supplemental Security Income: A Bridge to Work* and *Supplemental Security Income: So You Have Decided to Apply*, are available online at <http://www.ncset.org/publications/default.asp#parent>

Also of interest:

The Appeals Process, an electronic factsheet on the SSA Web site: <http://www.ssa.gov/pubs/10041.html>

Your Right to Representation, an electronic factsheet on the SSA Web site: <http://www.ssa.gov/pubs/10075.html>

Advocacy Skills and the Social Security Administration, a Work Incentive and Transition Network factsheet in pdf format: <http://www.vcu.edu/rrtcweb/witn/factsheet1.pdf>

For other materials developed by the Work Incentive Transition Network visit: <http://www.vcu.edu/rrtcweb/witn/ssi.htm>

Example 3: Hearing

Example 3: Hearing

Marci was denied SSI benefits. When she and her family went through the first level of appeal (reconsideration) they didn't understand that they could add more information to her file. Marci was denied benefits again because her file didn't contain information on all the supports she received in order to work. They appealed SSA's determination again. This time, with the help of an attorney, Marci and her parents provided SSA with detailed information about Marci's limitations due to her disability and the supports she needed in order to participate in the workplace.

Marci was 22 years old and had a cognitive disability. She was socially outgoing, enthusiastic, and loved helping people. Marci worked in a small office, 15 hours a week at \$6 per hour and received no benefits. She wanted to increase her work hours so she could earn more money and receive vacation and health benefits. Marci's employer was willing to train Marci for more duties if she could improve her hygiene and impulsive behaviors. Marci was proud of her office job and believed she could soon work full-time and support herself.

Marci lived with her parents but was determined to be independent, work full time, and live on her own. Her parents were also working toward this goal but realized that it might take Marci quite a while to be able to manage her own place and a full-time job. Her parents were afraid that if she lost her job she might not easily find another.

Marci's parents and her job coach provided many work supports. Information about these supports was not included in her initial SSI application; thus she was denied benefits. Her job coach regularly supported Marci and her employer, and would likely be required for long-term support. When the family went through the first step of the appeals process, they did not know that they should describe these supports or add more information to Marci's file. They assumed many of the sup-

ports provided to Marci were understood by the SSA representative, given her type of disability. Since SSA did not receive complete information, Marci received a denial at the first level of the appeals process.

The family then prepared for the next step of the appeals process (a hearing) by choosing an experienced attorney who understood SSI disability issues. He was realistic with Marci and talked to her about her difficulties due to her disability as well as her strengths. He realized that Marci was very talkative about all the things that she could do, and that her parents and service providers had never been successful in getting her to discuss work problems or her disability. The attorney questioned Marci's parents on the supports provided to her so that she could work. He went over the SSI file and requested additional information on job accommodations from both employer and job coach. He learned that grooming issues, appropriate communication, and transportation were still issues for Marci, and that she receives ongoing support in these areas.

The attorney also discovered that Marci got angry and left work early if her supervisor attempted to correct her work and speak to her directly about her work behaviors. To address this behavior, Marci and her job coach worked on anger management strategies. He documented that Marci's behaviors and limited work

Example 3: Hearing (cont.)

skills prevented her from increasing her work hours. The attorney presented all this new information to the ALJ.

Marci's job coach agreed to attend the hearing so she could provide additional explanations on some of the strategies she provided Marci and the employer.

At the hearing, the ALJ reviewed the paperwork he had on file. He asked Marci's attorney many questions regarding the new information

and then spoke with Marci. He listened to her describe her job duties, hours, and work goals. He then listened to the job coach describe

specifically how she worked with Marci and the employer.

The judge complimented Marci on her good work attitude

and goals. He closed the hearing by stating that Marci would have a written decision in a couple of weeks.

Of those reviewed by the Appeals Council, 27% are sent back to level 2 to be reheard.

How Decisions Are Made

1. Medical Evidence

Your medical doctor, psychologist, psychiatrist, qualified speech and language pathologist, or school psychologist provide medical evidence. Evidence provided by professionals directly providing you with treatment generally carries the most weight in a decision. However, if this information is insufficient, SSA will arrange for further examination by one of the professionals you have worked with before or from a consultant hired by SSA.

Anyone who knows the person with a disability well can write a report or attend the hearing to explain any challenges that are due to the disability. Thorough reports are very important. This can include information about all different types of support provided by family members, friends, school staff, and others.

*Decompensation is defined by an increased level of functional difficulty under stress. This could result in withdrawal from normal work activities, a decline in work performance, difficulty getting along with co-workers, or any behaviors that make it difficult to keep a job.

2. Evidence of Functional Limitation

SSA considers how your disability keeps you from working by looking at the functioning areas. This information is gathered from you, your family members, your Individualized Education Program (IEP) records, teachers, employers, counselors, therapists, or anyone else who is familiar with your limitations or restrictions in these areas:

- a. Activities of daily living
- b. Social functioning
- c. Difficulty maintaining concentration, persistence, or pace
- d. Episodes of decompensation*

The SSI Appeals Process

You May Choose Someone to Represent You on an SSI Appeal

Representation can be provided at all levels of appeal. This person may be an advocate, parent, attorney, or other individual who is familiar with SSI and your specific situation. SSI will work with this person just as they would with you. This person can come **with** you or go **for** you to any interview, conference, or hearing. They may help get information from your SSI file such as medical records or statements from teachers or other support specialists. You can even have more than one representative if you choose. Your representative(s) cannot charge or collect a fee from you without first getting written approval from SSA.

Once you choose a representative, you must inform SSA **in writing** as soon as possible. To do this, you can get a Form SSA-1696-U4, *Appointment of Representative*, from any Social Security office.

You must give the name of the person you are appointing and sign your name. If the person is not an attorney, he/she must, in writing, give his/her name; state that he/she accepts the appointment; and sign the form.

Your representative will receive a copy of any decision made on your disability claim and assist in determining whether an appeal would be to your advantage. Your representative can:

- **Review** what is in your file.
- **Identify** and obtain missing information about your disability.
- **Request** a reconsideration, hearing, or Appeals Council review for you.
- **Help** you and any witnesses prepare for an appeals hearing.



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PACER works with NCSET to represent family perspectives and disseminate information to a national network of federally funded parent centers and the families they serve. Access Parent Briefs and other NCSET materials online at: www.ncset.org

NCSET works to increase the capacity of national, state, and local agencies and organizations to improve secondary education and transition results for youth with disabilities and their families. NCSET is headquartered at the University of Minnesota, and is a partnership of six organizations, including PACER Center. NCSET:

- Coordinates national resources that connect policymakers, administrators, professionals, educators, employers, parents, and youth with disabilities to information and useful resources;
- Hosts capacity-building institutes and workshops, national summits, national teleconference calls, and additional training opportunities;
- Develops research-to-practice tools for everyday use; and
- Provides technical assistance and outreach.



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