

Legal & Nonprofit Partnering to Benefit People with Disabilities

If you haven't yet partnered with a lawyer, it may be time to do so. The benefits can be enormous.

By Bruce S. Lipsey

Many people with disabilities rely on nonprofit organizations to help them secure the benefits they need. Without that assistance, they often give up in the face of all the obstacles, forgo the process entirely, and relinquish their deserved benefits.

Today their need is greater than ever. Courts are increasingly bent against claimants. Back when Ronald Reagan was president, it was clear policy to deny claimants regularly of their benefits. Then Congress stepped in and liberalized the system. But the pendulum has swung back.

Now the average approval rate for claims is under 50%. That means more and more people are being shut out after long waits. It's common for judges to pick and pick at people's credibility, exaggerating flaws and wrinkles and using any excuse to turn them away.

Certainly there are cases that shouldn't be approved. But most nonprofit organizations are aiding claimants who have a rightful claim. In today's judicial climate, it's crucial to prepare cases properly.

That's why it's so important to partner with a legal expert. A lawyer with experience in the disability field will make your job much easier. Such a partnership will ensure that deserving people aren't disclaimed.

“Partnering with a lawyer can help you cut through these complicated issues.”

The Process

It's vital that you, your partner lawyer, and the individuals applying for benefits all understand the process. Here are the steps you'll need to navigate together:

Apply. The application is lengthy but can be completed online, which can be helpful. The information requested is fairly basic: Questions regarding day-to-day routine and limitations are included, as is a request for a list of doctors. The administration will order the applicant's records, and the applicant may also be asked to see a doctor chosen by the government. Ultimately, a decision will be reached and the applicant will be notified.

On average, the application takes two to three months to process. Most claims are denied at this level. So you should count on another two or three months for the appeal (or “reconsideration”) phase. If your appeal is approved, you'll then need to request a hearing before a judge. As this could take a year, it's essential to develop the case aggressively along the way so the applicant is prepared at every level for decision making.

Undergo a medical examination. Typically, these examinations are used as an excuse to deny benefits to the applicant. But don't discourage the applicant from moving forward. The judge will weigh the opinion of the applicant's treating doctor heavily. So urge claimants to keep open, positive lines of communication with their doctor.

Provide vocational data. Once a case is brought to a hearing, the government may retain a vocational expert. Be wary of these experts. They'll most likely offer a series of hypothetical questions that the judge will use to determine employability. Once again, a strong relationship between the applicant and the treating doctor is important. The medical evidence in the case should be strong enough to force the vocational expert to address the claimant's medical background. This is another area where a lawyer can help your organization understand potential pitfalls and provide resources to shore up an individual's case as much as possible.

Work Issues

Some nonprofit organizations may not realize that it's possible for a disabled person to work even while receiving Social Security disability benefits. In fact, individuals can work a limited amount (earning up to \$1,010 a month) without giving up their benefits. Additionally, a trial work program exists. This program lets people who are receiving benefits return to work with no limit to the amount they can earn for up to nine months. If they make it through the nine months, the return to work would be deemed a success, and benefits would stop. (The claimant could, however, drop back under the \$1,010 amount and continue to receive SSDI benefits.)

People can earn more than the \$1,010 amount and still be considered disabled if they can prove the following:

- **The employer was overpaying** in relation to the work done.
- **Substantial accommodations were made** to keep the individual at work. For example, perhaps the employer provided an assistant for the individual or bought medical equipment that allowed the individual to travel to work.

There are regulations in place that define these work issues more specifically. Again, partnering with a lawyer can help you cut through these complicated issues.

Why Partner with an Attorney?

You probably won't need an attorney during the application phase, but it makes sense to hire counsel when an applicant reaches the reconsideration phase. At this point the Social Security Administration has made its decision not to pay, and a lawyer knows how to move through the long, involved appeal process. Giving people access to counsel during this stressful time is one of the greatest gifts your organization can give.

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Legal representation is also helpful if the applicant is late in filing an appeal. Several legal criteria can be used to open up a late appeal. For example, the judge may let the appeal proceed if the individual:

- **suffers from mental illness** and didn’t understand the process
- **has difficulty** with the English language
- **was misled** by the Social Security Administration.

Attorneys’ fees in disability claims are set by the Social Security Administration. Currently, the fee is based on a contingency (meaning that there’s no need to pay the attorney unless the claimant is awarded benefits). The fee is 25% of the award with a cap of \$6,000. So, if the claimant receives \$10,000 in benefits, the fee is \$2,500. The government mails that amount directly to the attorney without the claimant’s involvement.

It’s unfortunate that so much perseverance is needed to help people receive the benefits they need and deserve. But since the government is sending a clear message — “We’re not going to make this process easy” — we need to respond with all the ammunition we can muster. A trusting partnership between your organization and an attorney will help many deserving people lead the most dignified and enriching lives possible. S

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Building Your Legal Partnership

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Four Myths about Attorney-Client Privilege (Vol. 25, No. 6)

Attorneys and Nonprofit Consultants: Keep Communications Confidential (Vol. 22, No. 1)



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