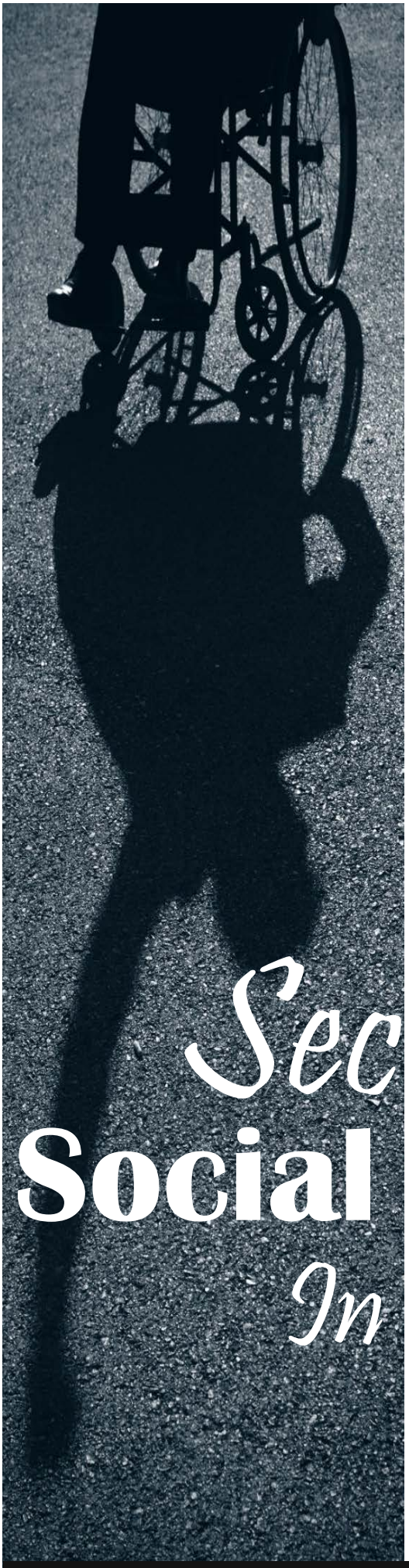

Securing Social Security *In New Jersey*

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Introduction

The focus of this chapter will be on the preparation and persuasion in pursuant of a positive Social Security Disability Hearing result: a case study in denial of benefits leading to the systemization in preparation and presentation of Social Security Disability hearings.

A 58-year-old college-educated school principal once argued that his disability commenced prior to the date initially assigned by the Social Security Administration, leading to an eventual hearing denying the earlier onset date. Although denied, the preparation for this claimant's hearing and the persuasive arguments made in advance and during the hearing and the eventual written decision by the judge remains one of the most effective tools used by my office in the preparation of files and arguments made to administrative law judges prior to and during hearings.

This chapter will deal directly with and hopefully provide a road map to the Rule of Four for the preparation of Social Security Disability hearings as well as the arguments made prior to and during the hearings. This chapter will provide a brief introduction to the Social Security Disability Program, with an initial review of the sequential evaluation process in order to establish the importance of the Rule of Four. We will also discuss the preparatory steps involved in getting to a hearing. Addressing the basic requirements in order to be determined eligible to even make the application, and the essential pieces of evidence which will be necessary in order to package an application in the best possible way and evaluate the information prior to the hearing in order to effectively present a claimant's arguments prior to and during the hearing.

This chapter will deal directly with and hopefully provide a road map to the Rule of Four for the preparation of Social Security Disability hearings as well as the arguments made prior to and during the hearings.

We will begin with the Rule of Four and break down each of the meetings in order to provide the reader with an understanding of its importance, hopefully providing tactical tips which have been found to be effective throughout the administrative law hearings I have attended.

1. The Rule of Four

The Rule of Four is nothing more than a made-up description the number of time that a client is met with in preparation for a hearing. There is an initial consultation, usually occurring at the reconsideration phase of the disability process. The initial interview is conducted as a fact-finding mission. Questions regarding a person's education, work, and medical background as well as current treatment, complaints, and witnesses are acquired. The information obtained is then used as an initial stepping stone to move forward with the particular claim. A copy of our initial intake is attached as one of the word documents and during the initial process multiple documents are signed. An Appointment of Representative is signed, authorization to release information, an attorney's fee agreement, the request for reconsideration, my own medical authorization forms and an initial intake form are all completed during the initial interview. Subsequent to the initial interview, my office then retrieves medical records, educational records, vocational records, treating doctors' opinions, any prior claims that have been filed, and witness statements in an attempt to package together as best a presentation as possible.

The second meeting or the second of the Rule of Four is the denial of the reconsideration and the request for a hearing.

The second meeting or the second of the Rule of Four is the denial of the reconsideration and the request for a hearing. This again requires a series of document to be completed and signed by the client, specifically, the Request for a Hearing, updated medical authorization forms, medication lists, and medical provider lists in order to update the client's file. These documents are all located on the Social Security Disability website, www.ssa/gov and are used on a regular basis as a way to stay in touch with the client. The Social Security process can take approximately eighteen months from beginning to end. As a way to maintain constant client contact and provide a sense that there is ongoing work being done on a client's file, updates are sent on a bimonthly calendar that is also one of the forms that I have attached in word form.

Rule three of meeting three comes when an exhibit list has been prepared and we have been notified by the Social Security Administration that it has been completed. At this stage we meet with the client to review the exhibits, again update any medical documentation or medications, and review medical records with the client which will have the most bearing on the eventual determination. It is at this step that I will contact the treating physician and request that they provide an opinion as to the person's disabilities and/or abilities in terms of what they can and cannot do.

The final meeting in the Rule of Four will occur approximately one week prior to the actual administrative law hearing. It is at this meeting that preparations are made for the hearing itself and the client is advised on the location of the Social Security Disability Hearing, as well as what to expect. We remind the client of discussions concerning prior work, education, and medical treatment. We also discuss a person's current complaints and answer the specific questions of how a person will spend a typical day, what restrictions someone has, and again review the doctor's analysis as to the person's ability to work or a description of their restrictions.

We will also discuss the vocational expert and the medical expert and indicate that there may be some unique language at the hearing itself concerning specific job titles, number and other descriptions as to a vocational expert's opinion on the client's ability to perform either past relative work or any other work in the national economy. Each of the meetings with the client has specific intent and will be described in more detail in the remaining parts of the chapter.

An individual will be considered disabled only if his or her physical or mental impairments are of such severity that he or she is not only unable to do their previous work but cannot, considering their age, education, and work experience, engage in any other kind of substantial gainful work

2. An Introduction to Social Security

Social Security Disability regulations are set under the Federal Social Security Administration. SSD is designed to help qualified individuals who cannot perform "substantial gainful activity" prior to their formal age of regular retirement. A qualified disability can mean the inability to engage in substantial gainful activity due to a determinable medical impairment (physical or mental) that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. An individual will be considered disabled only if his or her physical or mental impairments are of such severity that he or she is not only unable to do their previous work but cannot, considering their age, education, and work experience, engage in any other kind of substantial gainful work which exists in the claimant's immediate area of residence or whether as specified the specific job vacancy exists for the claimant or whether the claimant would be hired if they applied for work. For purposes of this subsection a "physical or mental impairment" is an impairment that results from an anatomical,

physiological or psychological abnormality, which are demonstrable by medically accepted clinical and laboratory diagnostic techniques. The regulatory authority for the Social Security Disability claims are found in the administrative rules for the OASDI Program and are found at 20 C>F>R> Section 404.1 et. seq.

The basic premise that an individual must be out of work for at least six months and have a statement from a medical doctor indicating they will be out for at least one year in order to be eligible to apply for benefits. In addition, an individual must have contributed to the Social Security Program over a sufficient period of time. Every individual must have approximately five out of the ten prior years of work credits or twenty quarter credits out of the prior forty calendar quarters prior to their becoming disable. An individual is eligible to receive twelve months of retroactive benefits from the application date and an individual can either apply online, in person at the local district office, or by calling 800-772-1213.

3. Sequential Evaluation Process

The case study and the administrative law judge's decision provide a very accurate description of the sequential evaluation process. The first step performed by the judge is to determine whether a claimant performed substantial gainful activity during the alleged period of disability. The regulations of 20 C.F.R. 404.1572 define "work activity" as work that involved doing significant physical or mental activities. Or it can be considered "substantial" even if done on a part-time basis, if less money is earned, or if work responsibilities are reduced from previous employment. Gainful work activity is the kind of work usually done for pay or profit, whether or not a profit is realized. The substantial gainful activity ceiling for 2012 is $1,010.00 per month.

If it is determined that the person has not engaged in substantial gainful activity since the alleged onset date of the disability then the administrative law judge will move on to the second step, the sequential evaluation to determine whether the claimant suffers from a severe impairment as defined by 20 C.F.R. 404.12521. A medically determinable impairment or combination of impairments is "severe" if it significantly limits an individual's physical or mental ability to basic work activities (20 C.F.R. 404 1520).

If a severe impairment exists, then all medically determinable impairments must be considered in the remaining steps of this sequential analysis (20 C.F.R. 404.1523). Impairments are severe if they create a more then minimal effect on a person's capacity to perform basic work activities as outlined in 20 C.F.R. 404.1521. In case study, the judge determined that the claimant had not performed substantial gainful activity and determined that as a result of the combination of coronary artery

disease, hypertension, cervical degenerative disc disease, low back syndrome, major depressive disorder, and panic disorder that the impairments were severe enough because they did create more than a minimal effect on his ability to work. As a result, the judge continued on to step three of the analysis.

At the third step of the sequential evaluation, it is determined whether the claimant's impairments meet or equal any of the impairments listed in the regulations. Most medical conditions have a specific listing which outlines the specific requirements in order to meet that listing. In the analysis, the judge reviewed listing 12.04 (Affective Disorders) and 12.06 (Anxiety Disorders). At this time of the hearing, our focus was on the client's coronary artery disease as well as the orthopedic conditions more than the psychiatric issues. The judge felt that since there was no physician statement indicating the claimant's impairments equaled the listing for the psychiatric conditions, the claimant did not meet any listing. This became a very valuable lesson in terms of the theory of presenting cases as well as the acquisition of opinions from treating physicians as to certain conditions.

The next part of the judge's decision provided a very good analysis as to step three in the sequential process. The judge indicated that prior to proceeding to step four, it would be necessary to determine the functional restrictions imposed by the claimant's impairments. The judge indicated that this was the "residual functional capacity" as denied in the regulations as the most an individual can do after considering the effects of physical and/or mental limitations that affect the ability to perform work related tasks (20 C.F.R. 404.1545). The judge indicated that in making the assessment he must consider all symptoms, including pain, to the extent of which these symptoms can reasonably be accepted as consistent with objective medical evidence and other evidence based on the requirements of 20 C.F.R. 404.1529.

The judge also indicated that he must consider any medical opinions which are statements of acceptable medical sources which reflect judgments about the nature and severity of the impairments and resulting limitations

The judge also indicated that he must consider any medical opinions which are statements of acceptable medical sources which reflect judgments about the nature and severity of the impairments and resulting limitations (20 C.F.R. 404.1527). The judge also indicated that in assessing the residual functional capacity, a claimant's subjective complaints are evaluated under the criteria of 20 C.F.R.404.1529 and include such matters as one's daily activities, the location, duration, frequency, and intensity of pain or symptoms precipitating and aggravating factors, along with the type, dosage, effectiveness, and side effects of the claimant's medications. Treatment other than medication is the considered, along with measures to relive pain or other symptoms.

This analysis brings to light the importance of the completion of the documentation throughout the appeals process and its consistency with the medical records that are provided to an administrative law judge. As a result of this, the judge felt that the limitations were significant enough to continue with the analysis.

The fourth step in the sequential process requires the judge to determine whether the claimant considering the restrictions associated with his impairments is capable of performing past relevant work. Past relevant work as noted by the judge is defined in the regulations of 20 C.F.R. 404.1565. It is work usually having been performed within the last fifteen years of the fifteen years prior to the date that disability is established and the work must have lasted long enough for the claimant to learn to do the job and meet the definition of substantial gainful activity. This is the point in the hearing process where a vocational expert's opinion starts to take form and have an impact on the awarding of benefits. Again, in the case study the judge felt that the client could not perform past relevant work and continued to the fifth step of the analysis.

The fifth step in the sequential evaluation must occur when it is determined that the claimant cannot perform past relevant work.

The fifth step in the sequential evaluation must occur when it is determined that the claimant cannot perform past relevant work. The judge appropriately noted that the burden shifts to the commissioner of the SSA to show that there are jobs existing in significant numbers in the national economy that the claimant can perform consistently with his medically determinable impairments, function restrictions, age, education, and past work experience. For this determination, medical vocational expert analysis and opinion come into play in terms of determining whether a particular rule or particular guideline has been met and whether there are jobs as defined in the dictionary of occupational titles as to the other jobs that could potentially be performed by the claimant. The final analysis was that the claimant, as a result of his fiftieth birthday, was found to be disabled but that the medical documentation did not warrant a disability determination prior to the original date of disability date of disability was found.

4. Initial Interview

One of the most important parts of the hearing process at an initial interview is determining at what stage of the appeals process the claimant's matter currently sits. The initial interview also allows the attorney to determine whether it is a claim they want to take or whether they require additional information in order to make a decision as to whether they want to take that claim. The two most common claims are for Social Security Disability under Title II and Supplemental Security Income under Title XVI. There are several factors during an initial interview that can influence the outcome.

The first and most important factor is being able to document the conditions with medical proof. The second factor is whether the individual has a long work history and if so, what type of work they have performed. The third factor is the individual's age, whether they are over or under the age of fifty. An individual who is over the age of fifty-five with good medical documentation is a straightforward matter. An individual under the age of fifty with the same medical documentation has more of a challenge.

The initial interview requires spending significant amount of time with a claimant.

The initial interview requires spending significant amount of time with a claimant. The reason for that is to get the proper educational, work and medical documentation regarding the individual's situation. During the initial consultation with a client the first determination is where the client's matter is in the appeals process. At that point, I will explain to the claimant the importance of acquiring all of the information and the extent of time that the appeals process can take, especially if we are simply appealing an initial determination.

It is important to get to know the client, their family background, their education, their employment for the last fifteen years, hobbies, activities, or social groups that they belong to during the initial conversation. This will give the claimant's attorney an opportunity to identify any pitfalls in the case that may come up at the hearing. It is important to get to know what the client used to do prior to either being injured or disabled in order to gain an understanding of other potential impairments that may not be obvious.

Typically, I will set an hour for the initial consultation in order to simply talk with the client, and in doing so acquire the information that is necessary. There is an intake form which I have attached, used to determine the information, but acquiring all of the client's information, skills, disabilities, and so forth sets the course for a smooth hearing and establishes what needs to be accomplished in order to have a

successful hearing. The questionnaire we use acquires basic general information, medical information including doctors, hospitals, medications our client has taken and currently takes, the effects of the medications on the claimant, and how all of it will help to establish physical and/or mental restrictions. All of this information is critical to again having a successful hearing.

5. Gathering & Submitting Evidence

Once the initial intake has been completed, the next step of the process is to commence gathering, evaluation, and submitting the medical documentation. In addition to medical documentation we also, if necessary, will acquire educational background information, specifically if there are IEPs, literacy, or IQ issues. We will acquire information regarding workers' compensation, personal injury or any other type of litigation and the materials from those causes of actions as well as acquiring the medical proofs.

During the initial interview, an individual signs multiple authorization forms so that all of this information can be acquired. Acceptable medical sources can establish that impairment exists and Social Security defines what is an acceptable medical source at C.F.R. 404.1513, 416.913. An acceptable medical source must be a licensed physician, osteopath, or psychiatrist. The source list also includes licensed or certified psychologists and the definition also allows acceptable sources for specific diagnosis in their areas, specifically optometrists, podiatrists, certified school psychologists, and speech therapists. These particular sections of the C.F.R. allow the medical provider to offer an opinion as to the claimant's impairment and its effect on their ability to function. The SSA relies on what is medically acceptable; however, we also look for the opinions of physical therapies, nurse practitioners, teachers, counselors or other lay evidence, family and friends to discuss the impact of the medical problems and their weight on the claimant's ability to work or function in daily life. These records can also be very helpful because claimants tend not to be great historians and when you review the medical records in combination with the therapy notes and other information that you are acquiring, you can put the pieces of the puzzle together.

Furthermore, evidence from a treating physician is critical as the SSA provides greater weight to the treating provider's opinion. As long as their opinion is supported and not inconsistent with the evidence in the record, it must be given controlling weight on the issue of diagnosis and severity of the individual's impairment (20 C.F.R. 404.1527). In addition to the statue, Social Security has rulings and there are two which discuss the weight of medical evidence from a treating source. Those rulings are 96-2P and 96-5P. The rulings reiterate the federal

regulations and can be strategically used during a hearing to ensure that even if an administrative law judge denies benefits, grounds for appeal have been laid.

6. The Second Meeting

This is a request for a hearing. Initially when I meet with claimants we are at the reconsideration step because our office does not handle the initial application. It is important for any number of reasons that if an individual is serious enough, they will go through the initial phone conference or online application and come to our office once they have been denied, which is the initial interview in applying for reconsideration.

The second Rule of Four or meeting two is the appeals hearing request, where we perform a couple of different activities. Initially we will fill out the request for hearing and confirm that we have the updated medical providers, any undated medications, and submit that documentation immediately. But at this stage one thing that we also try and do is start evaluating the information that we have already acquired. As an example, we will evaluate any educational material which can potentially include the inability to speak English, the inability to read or write, or if marginal or limited education is a factor then we will have acquired that information and confirm that the individual's prior work history matches their educational experience.

The second Rule of Four or meeting two is the appeals hearing request, where we perform a couple of different activities.

The reason for this is because with impairments or disabilities, an individual may not be able to have direct entry into skilled work or semiskilled work and as a result would be deemed to be disabled. In addition, we have been by the second meeting or rule two of four. We have looked at the prior work level. That is, is the prior work unskilled work which needs little or no judgment to do simple duties that can be learned on the job or in a short period of time or are they semiskilled which needs some skills but does not require the more complex work duties? Semiskilled jobs may require alertness and close attention to machine processes, inspecting, testing, or otherwise looking for irregularities or guarding equipment, property, or material. A job can be classified as semiskilled when coordination and dexterity are necessary.

Finally, is the claimant's prior occupation one in which they need to use judgment to determine the machine and manual operations in order to perform the job properly or acquire laying outwork, estimating quality, determining the suitability and needs of

quantities of materials or making necessary computations or mechanical adjustments? It is important to know the prior work and how the disabilities and/or impairments affect the ability to perform that type of work to determine two things. One, is the person able to perform past relevant work and two, do the impairments affect the ability to reenter the job force in that particular type of work or even less demanding type of job?

At this stage we also start to examine the non-exertion limitations that a claimant has. These abilities involve sitting, standing, walking, lifting, carrying, pushing, and pulling. Examples can be postural, that is, the claimant needs to alternate a sitting or standing position during the course of a day or needs to elevate their leg, has difficulty turning their head, or has difficulty with reaching, grabbing, handling, or fingering. Environmental issues can include working around fumes, in heat, tolerating noise, or being around dangerous machinery. Mental can involve interacting with others, interacting with supervisors, being able to understand and carryout simple instructions with supervisors, being able to understand and carryout simple instructions, or the ability to maintain attention, concentration, pace persistence, and accuracy. Sensory disability, which involves difficulty in speaking, hearing, feeling, is also looked at. These impairments or limitations can have a direct effect on the ability to perform past relevant work or other jobs in the national economy. It is also at this step that we start to prepare a theory of the case in written form and start to complete a hearing checklist.

7. Meeting Three

The exhibit list has been prepared.

The exhibit list has been prepared.

The exhibit list has been prepared. Once we receive notice that the SSA has prepared its exhibit list we will now pursue the third Rule of Four and meet with the claimant again. The purpose of this meeting is to review the medical documentation. It is at this stage that the medical documentation becomes the focus of our representation. It is also at this stage that we will acquire any outstanding medical records that we have not already received and we will start to re-request opinions from the doctors, both physical and mental if appropriate.

We also have the client complete an additional medications form, medical treatment form, and work history form to confirm that they are updated and complete as already laid out in the first two submissions. It is also at this stage that we will contact the court if any of the medical documentation is inappropriate or if we are going to object to the submission of some of the records. I usually make those objections at this time.

The importance of this third rule has actually been extenuated by decisions recently rendered at the District Court in Teambers v. Astrue. (835F.supp.2d668(s.d. ind. 2011)). It is a case where the claimant appealed a denial and the District Court remanded back to the ALJ as indicated the judge did not sufficiently support the decision not to give controlling weight to the treating physician. The court noted that a treating physician's medical opinion is given controlling weight if it is "well supported by medical expertise in clinical and laboratory diagnostic techniques" and "not inconsistent" with the other evidence in the records (20 C.F.R. Section 404.1527(d)(2)). The court indicated that because ALJ did not give the treating physicians any controlling weight, he was required to subsequently analyze certain factors and that the administrative law judge failed to do so. The error by the ALJ required the matter to be remanded.

In addition, Griffith v. Astrue, 835F.supp.2d771(d. del. 2012) is a case where the claimant indicated that the administrative law judge had "cherry-picked" information from the treating physician and non-examing sources to support a finding that the claimant was not creditable and could perform sedentary work. The court indicated that a treating physician's opinion is to be given great weight if it well-supported by medically accepted clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the cases record. The Federal Court also indicated that an administrative law judge is not permitted to "cherry pick" evidence to support their position. The District Court found that the treating physician presented positive clinical findings that supported the doctor's opinion and therefore the hypothetical which was posed to the vocational expert was flawed as it did represent the claimant's true impairments. The decision denying benefits was reversed and the case remanded for reconsideration. These cases outline the significance and reason for the third meeting so as to confirm the establishment of the medical documentation, the impairments, their application to the GRID rules and whether they are helpful to the claimant's case.

8. The Fourth Meeting-Hearing Notice

The purpose of the final meetings is to prepare the claimant for trial. The first thing I will explain to the claimant is the hearing itself. I indicate that it is being conducted by an administrative law judge who will state as part of the record that he/she is there to make an independent decision, that the court is not bound by any prior decision and he/she is there to make an independent decision based on the medical records and the independent testimony that is acquired. I indicate that the judge will ask whether the attorney has any objections to the exhibits, whether the attorney will waive a complete reading of all of the issues, which certainly we do as we have already prepared the client for what the issues would be.

After the preliminaries, most judges will afford the attorney an opportunity to provide an opening statement. As a result of our second meeting, this has been prepared and forwarded to the judge prior to the hearing. At this time, we point out to the judge the exhibit number of our letter brief but highlight the exhibits that we want the judge to focus in on as well as the listings and/or GRID numbers which are applicable. In preparing the claimant we will often discuss the questions that are biographical in nature to begin with, then employment, then education, then medical.

Most administrative law judges will ask questions about the impact of the medical limitations on a person's ability to function in their daily environment. In addition, it has been my experience that most judges will want to know how a person spends a typical day, why they could not go back to performing past relevant work, and what would prevent the person from performing full-time employment. The questions asked are open-ended, broad, and allow a claimant the opportunity to speak freely and completely about their complaints.

Most administrative law judges will ask questions about the impact of the medical limitations on a person's ability to function in their daily environment.

It is usually during the fourth meeting that I emphasize that it is crucial for the claimant to tell the truth, that they emphasize the problems that they are faced with on a daily basis but not to exaggerate them. In other words, I indicated to the claimant that if they are asked how they spend a typical day, it would be better to indicate that at some point they get out of bed as that is what they do rather than claiming to be in so much pain 24/7 that they can't move (yet they have traveled potentially over an hour to get to the hearing and have now sat in the hearing for over half an hour). I also indicate to the client that if at any point in time, based on the informal nature of the hearing, if they need to stand up and move around, as long as they stay close to the microphones then they are free to do this. It is important that they remember this because I have had clients testify that they can only sit for fifteen minutes yet sit for forty-five minute hearing, only to have the judge point that out in their decision when they deny that client their benefits.

So the consistency of medical documentation along with the person's testimony and the forms they have completed throughout the process are critical for a successful hearing and it is this fourth rule of the four where we emphasize that their participation, their ability to perhaps go for an hour or two to church or to social organizations or volunteer their time is not something that should be concealed but in fact fully revealed as it is appropriate since it is part of how the client spends a typical day.

It is important to know that there are many different types of judges,

It is important to know that there are many different types of judges, each of whom might handle the hearings a little differently. I have been with administrative law judges who ask all of the questions and leave very little to their discussion and then immediately revert to the vocational expert to acquire their opinion. I have had other judges who, after making an introduction, turn the entire hearing over to me and I have conducted and taken testimony from my client and then had the judge move on with the vocational expert based on the testimony. There are also judges who have an interspersing of those two styles and a claimant's attorney is no longer being provided the name of their judge in advance. There are several administrative appeals requesting that this be amended; however, it does not appear that this will happen in the near future. Therefore, it is important to prepare the client for the worst judge imaginable to hopefully be pleasantly surprised when you get a more favorable judge. There are publications which I would recommend which are published by Thomas E. Bush at James Publishing called Social Security Practice as well as another by Charles Hall at Thompson West Publishers called Social Security Disability Practice. In addition I would also suggest acquiring statistics about the different judges at

www.ssa.gov/appeals/datasets/03_alj_disposition_data.html

and also the www.nosscr.org, which all contain helpful information concerning all of the topics which have been discussed here.

HEARING CHECKLIST

Client Biographical Information

- ☐ Address:
- ☐ Social Security Number:
- ☐ Date of Birth:
- ☐ Age:
- ☐ Application Date:
- ☐ Alleged On-set Date of Disability:
- ☐ Supporting Documentation for Date of Disability:

Education:

- ☐ GRID Rule
- ☐ Date Last Insured
- ☐ Medical Evidence
- ☐ Review Medical Records
- ☐ Operative Reports
- ☐ Has all medical evidence been submitted to court?

Theory of Case

- ☐ Receipt of lay evidence
- ☐ Educational information
- ☐ Vocational information
- ☐ Why Did Claimant Stop Working?
- ☐ List Impairments found by DDS
- ☐ List severity
- ☐ Specific listing involved, what is the physical R.F.C.
- ☐ What is the mental R.F.C.?
- ☐ Are there any credibility issues?
- ☐ What is the claimant's past relevant work?
- ☐ Has the claimant performed substantial gainful activity?
- ☐ How long have they performed past relevant work?
- ☐ Has past relevant work been appropriately classified?
- ☐ Does the claimant meet the GRID requirements?
- ☐ Do we have treating physician's report?
- ☐ Limitations the claimant will testify to both exertion and non-exertion, physical and mental

Hearing Preparation Meeting

- ☐ Discuss education
- ☐ Past relevant work
- ☐ How the job was done
- ☐ What the Job Title was
- ☐ How the job was done
- ☐ How a person spent a typical day
- ☐ Medications and their side effects
- ☐ Why can't person do what they used to do?
- ☐ Why could they not perform other type of work?

VE/ME Issues

- ☐ What testimony will a VE focus?

_____

- ☐ What restrictions would defeat the VE's establishment of jobs in the national economy about the ability to transfer skills

_____

- ☐ Have a written open statement

_____

- ☐ What exhibits are we relying on?

_____

- ☐ Theory of the case

_____

FAQs

1. **Do I need an attorney?**
   No, a claimant does not need an attorney to pursue a Social Security Disability claim. In fact, there are non-attorney representatives as well as companies provided by long-term disability insurance carriers to help claimant's pursue benefits. However, the Social Security Administration is not only statutory but controlled by Federal Regulation and rulings and is complicated from a vocational and medical point of view and potentially in the appeals process can go to Federal Court which is where a non-attorney cannot represent an individual. Furthermore, disability insurance companies who rely on other entities to acquire Social Security Disability benefits for a claimant do not have the claimant's best interest at heart.

   The long-term disability policies all have provisions which allow for the reimbursement of any other benefits received by a claimant, and therefore, the concern of the long-term disability insurance carrier is not that an individual receives their Social Security but that they receive their money back. Less, it is important to not only have an attorney but an attorney who specializes in Social Security Disability because most administrative law judges are used to seeing the attorneys who appear on a regular basis and they know that a hearing is going to proceed as it should otherwise do so by an experienced practitioner.

2. **How do I pay an attorney?**
   Social Security can be difficult, complicated and can take an extended period of time through the appeals process. Social Security recognizes this and has allowed for a contingent fee. The standard contingency fee arrangement as set by Social Security pays an attorney 25% of all past benefits up to the maximum of $6,000.00, whichever is less. If the individual must go to Federal Court, the $6,000.00 maximum cap is listed and the fee is up to 25% of all past due benefits. In addition to the litigation cost, there are fees for medical records and other documentation which is necessary; however, these costs are not born by the $6,000.00 fee and are the responsibility of the claimant.

Social Security can be difficult, complicated and can take an extended period of time through the appeals process.

3. **I have hired an attorney but what does the attorney do?**
   Based on the length and complicated nature of the matter, our office assists in filling out all of the SSA's forms. We evaluate an individual's claim and advise as to the pros and cons of the individual's matter. We acquire medical documentations and reports and opinions from treating physicians as well as, if necessary, consulting with medial and vocational experts to help support the claim. We also write theories and letters to the administrative law judges regarding the medical, vocational, and exhibits which we want the court to be aware of and if necessary file the appropriate paperwork in Federal Court.

4. **I have won my case, when do I get paid?**
   Typically it takes approximately one of two months for back benefits to be paid and monthly benefits to begin on a Social Security Disability case. If the claim is for Supplemental Social Security Income, no back benefits are provided prior to the date of the original application. Benefits for Social Security Disability go back one year from the date of the initial application where as an application for SSI benefits only start as of the date of the initial application. The monthly benefit is based on an individual's lifetime work earnings and the SSA sometimes provides the notice of the award first or the claimant receives the check and then the notice of award of receives notification of monies being deposited into their back account and then receives a notice of award. There tends not to be consistent response to the order in which this occurs.

   Benefits for Social Security Disability go back one year from the date of the initial application where as an application for SSI benefits only start as of the date of the initial application.

5. **Am I eligible for SS or am I eligible for Medicare?**
   Once a claimant has received twenty-four months of Social Security Disability benefits, the individual is eligible to receive Medicare. For Medicare Part B (doctor's visits), you pay a premium that gets deducted from the Social Security monthly check. If the income is low enough then the individual may be eligible for other programs such as Medicaid and should check with particular county welfare departments.

About SAMUEL M. GAYLORD, ESQ.
Founder & Partner

Samuel M. Gaylord founder and partner of Gaylord Popp, LLC specializes in the areas of workers' compensation, Social Security disability and disability pension appeal litigation. Mr. Gaylord is certified by the New Jersey Supreme Court as a workers' compensation law attorney and is licensed to practice in New Jersey, Pennsylvania and Washington DC. He received his B.A. degree from Syracuse University and his J.D. degree from Seaton Hall School of Law. He served as a judicial intern with the Honorable Charles A. Delehey, and since 1996 has worked representing injured workers. In 2002, Samuel Gaylord was named Young Lawyer of the Year for Mercer County and in 2003 received the Young Lawyer of the Year Service to the Bar Award from the New Jersey State Bar Association. In June 2007 Lawrence E. Popp, Esq. joined Sam and Gaylord Popp, LLC was born. More recently, Samuel Gaylord was named the 2013 Leading Practitioner in workers' compensation for the Mercer County F.O.P. and in 2014 he was named in the New Jersey Law Enforcement Journal as one of their Who's Who in Business, was named the 2014 Lawyer of the Year in workers' compensation by the Garden State Law Enforcement Officers Association and the New Jersey State Bar Association's 2014 Professional Lawyer of the Year for Mercer County.

Currently he is a barrister member of the American Inns of Court Foundation for Workers' Compensation of New Jersey and speaks regularly on issues of workers' comp and Social Security disability and disability pension appeals and their interactions. On August 20, 2014 Mr. Gaylord lectured on complex workers' compensation issues concerning litigation, causation and ethical issues. In addition, on October 29, 2014 for the Mercer County Bar Association he presented on Disability Pension and Your Workers' Compensation Benefits the Interaction. He is a member of the New Jersey State, Mercer County and American Bar Associations as well as the American Association of Justice and the New Jersey Advisory Council on Safety and Health. He is also a member of the National Organization of Social Security Claimant Representatives. He is the immediate past president of the Mercer County Bar Association, a member of the Ewing Democratic Club and a volunteer for several other more recent political campaigns. He has lectured and written on a variety of workers' compensation, Social Security and disability pension issues and is an accomplished trumpet player. He is married to Amy for these past 20 years and has two daughters Rachel age 15 and Anna age 13 and his son Benjamin age 8.