



**10** steps  
*to prepare for your*  
**Social Security**  
**disability hearing**

*By Gordon Gates*

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Attorney Gordon Gates specializes in Social Security disability law.

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Gordon Gates is a Social Security disability lawyer. He represents clients with Social Security disability and SSI claims in Maine and New Hampshire. An attorney licensed in Maine, Gordon is authorized to represent claimants before the Social Security Administration anywhere in the country. However, his disability practice is focused on the states of Maine and New Hampshire. Further, his practice in New Hampshire is limited exclusively to representing claimants before the Social Security Administration.

Gordon attended Tulane University Law School, where he served as Senior Articles Editor of the Tulane Law Review and graduated magna cum laude. He was admitted to practice law in Maine in 1991. Since 2005, he has focused his practice on Social Security disability and SSI cases.

Gordon is a sustaining member of the National Organization of Social Security Claimants' Representatives (NOSSCR), and is a member of the NOSSCR Technology Committee. He is also a member of the Maine State Bar Association and the York County Bar Association.

Gordon handles claims at every level of the Social Security process. He assists clients with initial applications, with appeals of denied claims, and with hearings before an administrative law judge (ALJ). He has successfully appealed denied claims to the Social Security Appeals Council and to the U.S. District Court, District of Maine to have unfavorable ALJ decisions remanded for new hearings.

Gordon is married, a father of a daughter, and resides in Maine.



The Social Security disability hearing, conducted before a U.S. administrative law judge, is a critical step of Social Security's administrative review of disability claims. The hearing level offers many applicants the best chance to have their disability claim granted. As a result, *preparing for the hearing* is critical to the success of your claim.

I have represented disability clients at hundreds of disability hearings. I have learned that it is the preparation, rather than the hearing itself, that determines the result in most disability claims.

[10 tips to prepare for you disability hearing >>](#)

# 1 Appeal within 60 days

There are many reasons why an initial disability claim gets denied, and many denials have little to do with the merit of your claim. Sometimes there is no logical reason for a denied claim. Try not to get discouraged by the denial of your application for disability benefits.

By appealing, you will ultimately have a hearing with a U.S. Administrative Law Judge (ALJ). The hearing level is your best chance to have your claim for disability benefits granted.

A common mistake made by disability applicants is that, instead of appealing a denied claim, they reapply later. Then they are denied again. You should not make that mistake! Improve your chances of receiving benefits by appealing your denied claim, rather than reapplying for benefits later.

[Prepare for the wait for a hearing >>](#)

## 2 Prepare for the wait for a hearing

Unfortunately, a hearing by administrative law judge takes at least a year in most parts of the country. That time begins on the day you request a hearing by ALJ. There is not much that can be done to speed up the hearing process in most cases. However, there are two exceptions to that rule:

**1. Critical case** - A critical case request asks Social Security to expedite a claim at the hearing level. Critical cases are governed by HALLEX I-2-1-40.

Critical cases get priority because they are the most serious claims. There are three situations that constitute critical cases: 1) the claimant's illness is terminal, 2) there is an indication that the claimant is suicidal or homicidal, and 3) dire need.

Dire need is the most frequent basis for a critical claim request. Dire need is when the claimant is without - and is unable to obtain - food, medicine or shelter. Mere hardship is not enough. The situation must be dire. An imminent eviction, with no financial resources to find new shelter, would certainly qualify.

[Prepare for the wait for a hearing, \*continued\* >>](#)

## 2 Prepare for the wait for a hearing, *continued*

**2. On the Record Decision** - An “on the record” (OTR) request asks Social Security to grant your case on the record without a hearing. This request is for claims pending at the hearing level at the Office of Disability Adjudication and Review (ODAR).

On the record decisions can only be fully favorable. You cannot lose your case on the record. Rather, if the OTR request is denied, your claim simply goes back in line for an eventual hearing.

Although there is nothing to lose by filing an OTR request, they should only be filed when a favorable result is mandated by the evidence and by Social Security’s disability evaluation process. Also, the medical evidence in the record should be up to date before an on the record request is filed.

If neither of the above exceptions applies to you, you will have to wait for your hearing. The good news is the time waiting for a hearing can be spent making your claim stronger, because the medical picture is usually clearer by the time the hearing is held.

[Determine why your claim was denied >>](#)

## **3 Determine why your claim was denied**

The denial letter from Social Security usually gives reasons why the claim was not granted. Also, the letter should provide a list of the medical records used to make the determination. Review the list to ensure that all of your medical records have been obtained and reviewed by Social Security.

The denial letter should also express a rationale for the determination. Does the letter say you can return to a past job? Does the denial letter say that, given your age, education, impairments and vocational background, that there is other work you could perform? This rationale helps to identify the type of evidence that needs to be developed to achieve a favorable decision at the hearing level.

[Learn Social Security evaluates disability claims >>](#)

## **4 Learn how Social Security evaluates disability claims**

The Social Security Administration uses a 5-step sequential evaluation process to determine whether or not you will receive disability benefits. Knowledge of the 5-step sequential evaluation is critical to assessing the merit of your Social Security disability claim.

### **Step 1: Are You Working?**

Step 1 determines if a person is “working”, according to the Social Security Administration definition. The work must be “substantial gainful activity,” which is currently \$1,000 a month as an employee. Earning that amount is enough for disqualification from receiving Social Security disability benefits. The judge will simply stop the inquiry at this step, and will not consider you impairments. If you are working at the SGA level, you are not disabled under Social Security’s rules.

[Learn Social Security evaluates disability claims, \*continued\* >>](#)



# 4 Learn how Social Security evaluates disability claims, *continued*

## Step 2: Is Your Condition Severe?

Step 2 evaluates whether your medical condition is severe enough to significantly limit your ability to perform basic work activities. In addition, the impairment must last, or be expected to last, for a continuous period of not less than 12 months or result in death.

## Step 3: Is Your Condition A Listed Impairment?

Step 3 asks if the impairment meets or equals a medical “listing.” The Social Security Administration uses more than 150 categories of medical conditions, called “listings.” These conditions are deemed to be severe enough to preclude a person from working. If you “meet or equal a listing” you will be granted benefits. If you do not meet a listing, the SSA proceeds to Step 4.

[Learn Social Security evaluates disability claims, \*continued\* >>](#)

# 4 Learn how Social Security evaluates disability claims, *continued*

## Step 4: Can You Do Work You Did Previously?

Step 4 explores your ability to perform your past relevant work, despite your physical or mental impairments. If the Social Security Administration finds that you can still perform this past relevant work, benefits are denied. Social Security considers the past work both as you performed it, and as it generally performed in the national economy.

It does not matter at step 4 if your former employer would not hire you, or if the place where you worked is no longer in business, or if all those jobs are now done in China. All Social Security does at this step is match your physical and mental residual functional capacity with the requirements of your former job.

If you cannot perform your past relevant work, then the process proceeds to the fifth and final step.

[Learn Social Security evaluates disability claims, \*continued\* >>](#)

# 4 Learn how Social Security evaluates disability claims, *continued*

## Step 5: Can You Do Any Other Type Of Work?

Step 5 determines what other work, if any, the person can perform. Social Security considers your age, education, work experience and physical/mental condition to make this determination. If Social Security finds that you cannot make the transition to other work, you will be granted benefits.

Because Social Security considers your age at this step, there are special rules for claimants over the age of 50.

Think about your functional limitations in a specific way >>

## **5 Think about your functional limitations in a specific way**

Disability is functionality. The judge will determine your residual functional capacity (RFC), which describes your work capacity that remains after the effects of your impairments are considered. Your Residual Functional Capacity (RFC) is the cornerstone of your Social Security disability claim. Unless you meet a listed impairment, the administration's assessment of your RFC will decide the outcome of your disability claim. The RFC is used to determine whether or not you can return to your past relevant work (step 4 of the sequential evaluation process) or do other work (step 5 of the sequential evaluation process).

The RFC is Social Security's assessment of your abilities to do sustained physical and mental activities on a regular and continuing basis in a work setting. The RFC considers only those functional limitations resulting from medically determinable impairments.

[Know your work history for the past 15 years >>](#)

## 6 Know your work history for the past 15 years

This means knowing the physical and mental requirements of your past work. Social Security considers your ability to return to this work, even if the job is no longer available. It is important to properly define your past relevant work, because it can only hurt you in a Social Security disability claim. If Social Security determines that you have the capacity to return to your “past relevant work,” your disability claim will be denied.

Not all past work qualifies as past relevant work (PRW). Past relevant work is “work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it.” See 20 C.F.R. § 404.1560(b)(1). Let’s look at each requirement:

[Know your work history for the past 15 years, \*continued\* >>](#)

## 6 Know your work history for the past 15 years, *continued*

1. **Your past work must be in the past 15 years.** The 15 years runs back from the date of determination, or from the date last insured, whichever is earlier.
2. **Second, past work must have been substantial gainful activity to qualify as PRW.** If you were an employee, the work must have been performed at the SGA level. If you were self-employed, see 20 C.F.R. 404.1575. Remember that an unsuccessful work attempt is not substantial gainful activity and therefore not past relevant work. By definition, an unsuccessful work attempt must occur after the onset of disability. See 20 C.F.R. 404.1574(c).

[Know your work history for the past 15 years, \*continued\* >>](#)

## 6 Know your work history for the past 15 years, *continued*

3. Third, the work must have “lasted long enough for you to learn to do it.” Unskilled work can be learned in less than 30 days. Skilled work takes longer. The length of time depends on the nature and complexity of the work. There are no firm rules here, but the vocational training times set forth in the Specific Vocational Preparation (SVP) section of Appendix C of the Dictionary of Occupational Titles are a good guide.

These rules, although technical, are important. For certain claims, eliminating a job from past relevant work can make the difference between winning and losing the claim for benefits.

Continue with your regular medical treatment >>

## **7** Continue with your regular medical treatment

Ongoing medical treatment is important both for the management of your health conditions and for your disability claim. Over time, the medical record of your impairments will become stronger, and will provide a better basis for a favorable disability determination. By the time your claim gets to a hearing by an administrative law judge, well over a year will have passed since your initial denial, and the medical picture is often much clearer by that time. One reason more claims are won at the hearing level is that there is often more complete medical evidence, including medical opinion evidence, by the time a hearing is held.

Be sure to tell your doctor about your symptoms, and how they affect your daily activities. Your doctor should enter these limitations into your treatment notes, so that it will be apparent to the judge reviewing your medical records that you are experiencing significant functional limitations.

[Obtain a medical source statement >>](#)



## 8 Obtain an opinion from your doctor

Identify which of your doctors is the most knowledgeable of your medical condition, and the most supportive of your claim for disability benefits, and get an opinion from that doctor.

Obtain your doctor's opinion regarding your physical and/or mental limitations, and how those limitations affect your ability to work.

Social Security is not concerned with whether or not your doctor believes you are disabled; that is an issue reserved to Social Security to decide.

What is important is your doctor's opinion regarding your work-related functional limitations. And that doctor's opinion is missing from almost every Social Security claim file that gets denied.

[Obtain a doctor's opinion, \*continued\* >>](#)

## **8 Obtain a doctor's opinion, *continued***

An opinion from your doctor setting forth your limitations due to your impairments is usually the most powerful medical evidence in support of your disability claim. You can greatly improve your chances of an award of disability benefits by obtaining these opinions prior to your disability hearing.

[Consider a statement in support of a disability claim >>](#)

## 9 Consider a statement from a spouse, parent, sibling or friend

Social Security will consider evidence from non-medical sources (for example, spouses, parents and other caregivers, siblings, other relatives, friends, neighbors, and clergy).

When you have the right person with the right story to tell, it can be powerful evidence. A non-medical, or “lay” statement is powerful evidence because it puts a disability case in a human context.

The statement is usually a 2 or 3 page typed document. It will usually tell the story of how the claimant used to be, what changed medically, and what life is like now. There is a genuineness to these statements, and they are often very moving.

Ideally, the statement should be in the record when the judge reviews the claim prior to the hearing. In a typical case, prior to the hearing the judge can only review the medical records and various Social Security forms that are in the claim file. The human element is often missing until the judge meets the applicant at the hearing. The statement adds the human element to the disability claim file in advance of the hearing.

[Get legal help >>](#)

## 10 Get legal help

The most important quality that a lawyer offers is perspective and judgment about the weaknesses and strengths of your claim. This judgment comes from attending hundreds of hearings, and seeing how the judge reacts to a particular claimant and particular medical evidence. There are several ways that a disability lawyer helps you:

- 1. Develops a winning theory for your claim.** The most important task for a lawyer is to develop a winning theory for your claim. Based upon your impairments, work history, age, education, and the Social Security disability evaluation process, a lawyer will seek the legal path that leads to an award of benefits.
- 2. Obtains the necessary evidence.** The key to winning a Social Security disability claim is proper development and presentation of medical evidence demonstrating disability. We will work to develop the claim, and to obtain the medical evidence necessary to support your claim. In particular, we will strive to obtain opinions from your medical providers regarding your functional limitations.

[Get legal help, \*continued\* >>](#)

## 10 Get legal help, *continued*

**3. Helps you tell your story.** Every disability claim has a unique story. Each person reaches the point of being unable to work in a different way. Your personal story about your struggle with your medical condition is often the most powerful evidence at the hearing for your disability claim.

**4. Represents you at the hearing.** A lawyer will represent you at the administrative hearing, and explain to the judge why your impairments prevent you from sustained employment. Prior to your hearing, a lawyer will explain the issues that are important to your claim, and will prepare you for your hearing testimony. Each administrative law judge conducts a hearing a little bit differently, and you should hire a lawyer who is familiar with the judges in your state.

**5. Ensures that you are paid correctly.** When your claim is approved, we will ensure that you are paid correctly by the Social Security Administration.

[Get legal help, \*continued\* >>](#)

## 10 Get legal help, *continued*

6. **Acts as your guide.** Applying for Social Security disability benefits can be difficult and frustrating. An experienced disability attorney can be your guide throughout the process, and can help you to understand Social Security's unique administrative procedures.

**Lastly, it does not cost one penny to hire an attorney to help you right away.** Attorney fees for a Social Security disability or SSI claim are contingent on winning the claim. That means that you pay a fee only if you win, and when you are awarded benefits. You pay no fee if your claim is denied.

The attorney fee is 25% of the retroactive benefits awarded in your claim. Attorney fees for Social Security claims are regulated by the Social Security Administration. The SSA must approve any fee that is charged in a Social Security case. Further, the fee is subject to a "cap" imposed by Social Security. The current fee cap is \$6,000 for fees awarded at the administrative level. As a result, the fee is 25% of the back benefits or \$6,000 - whichever is less. The ongoing benefits you receive are not subject to any attorney fee.


[Get legal help, \*continued\* >>](#)

## 10 Get legal help, *continued*

A fee agreement sets forth these details so that there is no misunderstanding. Typically, the SSA approves the fee agreement, calculates the back benefits and the fee, and pays the fee directly to the lawyer.

In summary, you can get experienced help right away at no cost to you unless and until you win your claim.

[For more information>>](#)



Congratulations on taking control of your Social Security disability claim by reading these ten steps to prepare for your hearing.

If you are a resident of Maine or New Hampshire, please contact me about representation.

I can be reached by telephone: (207) 284-9999, or by email: [gordon.gates@gmail.com](mailto:gordon.gates@gmail.com).

I look forward to hearing from you.