

## **Reconsideration of a Social Security Denial**

by Jacques Chambers

Statistics show that over half of all applicants for Social Security disability benefits, both SSDI and SSI, are turned down initially. As we have pointed out in prior articles on the subject, this is due more to lack of preparation when applying for benefits rather than to any effort on Social Security's part to hold down costs.

Social Security does offer a formal path of appeals that can frequently get the denial overturned and benefits awarded. The appeal procedures are the same throughout the United States, with the exception of a pilot program discussed below.

This month's column is going to look at the first level of appeal after an initial denial, the Request for Reconsideration or, in some locations, the Disability Redesign Protocol.

The appeal process starts when you receive the denial letter from Social Security. The letter gives the reason(s) that your benefits are denied and it lists the medical records that they used to deny your benefits. The letter is also dated, and that date starts the clock for the first level of appeal.

### **Disability Redesign Prototype**

Let's review this first since it is designed to eventually replace the entire Reconsideration process and is currently used in only a few areas.

This program was launched in an effort to reduce the amount of time it takes to appeal initial denials. While the results of this program have been mixed, it is still followed in those areas where it was first launched.

This pilot program is currently used in the states of Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New Hampshire, and Pennsylvania. It is also being used in parts of New York, primarily Albany and Brooklyn, and certain Social Security offices in the Los Angeles, California area: Metro (Alhambra, Burbank, Chatsworth, Glendale, Glendora, Tujunga, University Village, and Watts), Sierra West (Crenshaw, Culver City, Inglewood, and Torrance), and South Coast (Compton, Huntington Park, Norwalk, and Whittier).

In these areas, the Reconsideration stage of appeals is eliminated completely. Instead, the Social Security Representative is to contact you, inform you that the medical record as examined does not support a claim for disability, and give you the opportunity to add additional documentation and medical evidence to the file before it is officially denied. Unfortunately, the letters being used to notify claimants of this do not clearly spell out that the claim will be denied without more documentation. Some letters do not even mention that you have the opportunity to present that additional documentation in a face-to-face interview.

If your claim is filed in one of these locations, you should carefully read every piece of correspondence from Social Security and call if you are not clear about what they are telling you. (Of course, you should do that anyway, regardless of where your claim is filed.) If you receive one of these notices you should follow the instructions below on submitting additional medical documentation *without* using the Reconsideration forms.

### **Reconsideration**

Social Security requires that the documents for Reconsideration be filed within sixty days after receiving your Notice of Denial. They assume you got the letter five days after it was dated, so you actually have sixty-five days to file the appeal.

Appeals filed later than sixty-five days must include a “reasonable” explanation of why the appeal is being filed late. We recommend that you take a calendar and count off sixty days so you know exactly when the appeal must be postmarked. We tend to leave the extra five days off the deadline so there is a cushion. The reason for watching the deadline so closely is to make sure you have plenty of time to follow up on requests for additional medical records from your medical providers.

To have your claim reconsidered, you must submit three forms:

- **Reconsideration Disability Report (SSA-3441-F6)** – This form consists of a series of questions that allow you to provide any new or additional information about your medical condition and to list any medical providers whose records weren’t used in the initial decision.
- **Request for Reconsideration (SSA-561-U2)** – This is the actual request for review; however, it can practically guarantee another denial if you aren’t careful. The form gives you three lines on which to explain why you don’t agree with the denial. I have never seen a denial overturned because of three lines of information.
- **Authorization to Disclose Information to the Social Security Administration (SSA-827)** – These are the same medical releases you signed with the initial application. They again want several copies (one for each physician plus a couple of extras) signed and not dated.

*Note: I have never seen an approval based on just these two forms. To get your denial changed to an approval you must write “See attached documents” on the Request form and:*

- Submit medical records that show your symptoms are more severe than the original medical records stated;
- Submit new medical records and test results that provide more objective proof of your condition;
- Submit documentation that shows your condition meets one of the Listings of Impairments used by Social Security;
- Submit a narrative by your treating physician stating not only that you are disabled but elaborating on everything used to arrive at that conclusion; and,

- Submit any other documentation that supports your claim, such as third party testimony, symptom diaries, etc.

Once you submit your Request for Reconsideration and accompanying documentation, the process is very similar to that used with the initial application. Your claim will be assigned to a Claims or Disability Analyst, and that person will review all the medical information and determine whether or not you are disabled. Just as with the initial application, the Analyst may request additional medical records or schedule you to have a Consultative Examination by one of their doctors.

Sixty-five days is not a lot of time, so it is necessary to work quickly to obtain all the necessary documentation to overturn your denial. Start with examining the denial letter. Although it appears to be a form letter, it really contains information important to the preparation of your appeal.

First, look at the medical records they used in their examination of your claim. They will be listed in the Notice of Denial. What is missing? Did they miss one of the specialists? Your therapist? What is not on their list that would have supported your claim? Are there additional records created after the date received that could help your claim?

Also notice whether they believe that you can return to your old job or whether you are disabled from that job, but they believe you can do other work.

If geographically convenient, call your local Social Security office and make an appointment to review your file. You will be able to see exactly which records were received, plus you will be able to see the internal notes and summaries that will give you a good idea of how they arrived at their denial and what you must focus on to obtain an approval. If you had a Consultative Exam from one of their doctors, it is important that you get a copy of that report for you doctor to review and reply to.

When preparing your Reconsideration appeal, start with the Listing of Impairments and the medical records you will need to show how your symptoms prevent you from doing any kind of work. (See *Getting Disability Benefits Under Social Security with HCV* in the Benefits Archives of this site.) Assemble your documentation and submit it with the required Reconsideration forms.

It is recommended that you provide a cover letter that outlines the records you are submitting and what they include that supports your claim for disability.

Once your information is received you need to follow up with the process just as with the initial application since this level of appeal is a replay of the initial application process. (See *Helping Your Social Security Claim Through the System* in the Benefits Archives of this site.)

**Don't take the denial personally.** Social Security is not saying that you are not disabled; they are not saying you are able to work; and they are certainly not saying that

your symptoms don't exist. They are examining medical records, which are not always the most complete or easy to read. The people who review your claim have certain steps they must follow and certain information they must find. If they don't find it, they have no choice but to deny your claim. If you work with the Analyst handling your reconsideration appeal, you can frequently provide her with the information she needs to approve your claim.

**Spend time and effort on Reconsideration.** Many people, especially attorneys, will advise you to not waste time on the Reconsideration step, but just file the necessary forms and wait for the denial. They will caution that about 80% of all Reconsiderations are denied. However, I personally believe that very advice is what has helped create these distorted statistics. If you follow the advice in the columns on this website and study some of the many sites dedicated to Social Security disability, including Social Security's own site at [www.ssa.gov](http://www.ssa.gov), you have a good chance of being one of the 20% that gets approved and of avoiding the necessity of waiting over a year to get to the next level of appeal as well as having to share your benefits with an advocate/attorney.