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# **A MANUAL ON SSI/SSDI FOR PRISONERS AND THEIR ADVOCATES**

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# I. INTRODUCTION: WHY THIS MANUAL?

A growing number of men and women with severe physical and/or mental illnesses are in jail or prison. Many cycle through corrections facilities repeatedly, costing criminal justice systems and communities significant resources and causing great pain to themselves and their families.

Often the event precipitating their arrest is linked to both their lack of income and their unmet need for services that are essential if they are to maintain themselves in the community.

The resulting poverty and lack of access to health care can lead to incidents that greatly increase the likelihood that these individuals will have further contact with law enforcement. Without income support or health coverage, many people with severe mental illnesses become caught in a cycle of recidivism.<sup>1</sup>

The Social Security Administration administers two programs, Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), which pay benefits to men and women who are too disabled to work.

Unfortunately, many people who are eligible and would benefit from these programs do not apply for them. Often they do not know about these programs or are intimidated and/or confused by them. When it comes to SSI/SSDI, an unfortunate Catch-22 exists. The application process can be so long and confusing that anybody who is disabled severely enough to qualify is probably too disabled to navigate the application process.

Thus, this manual is designed not so much for the SSI/SSDI applicant, but rather the applicant's advocate.

You do not need to be an attorney to be an effective advocate. Of course, retaining an attorney increases an applicant's chances of being approved for benefits. Unfortunately, there are not enough attorneys willing and able to serve the disabled population. Even fewer attorneys serve the disabled, **incarcerated**, population. Thus, the responsibility often falls on the shoulders of non-attorney legal advocates, as well as friends and family of the disabled person.

The SSI/SSDI application process can be challenging. We hope this manual will assist you in advocating for your friend, family member or client.



## II. SSI/SSDI BENEFITS: AN OVERVIEW

The following question and answers are designed to give you a general overview of SSI.

### 1. What is SSI/SSDI?

People who are severely disabled may be eligible for monthly benefits under one or more of the programs administered by Social Security Administration (SSA).

The Supplemental Security Income (SSI) program provides monthly income to people who are age 65 or older, or are blind or disabled, and have limited income and financial resources. You can be eligible for SSI even if you have never worked in employment covered under Social Security. No SSI benefits are paid to family members, only to the disabled person.<sup>2</sup>

The Social Security Disability Income (SSDI) program medical requirements and application process are largely the same as they are for SSI. However, unlike SSI, a person's eligibility for SSDI is based on prior work under Social Security.

Generally, to be eligible for SSI/SSDI, an individual also must be a resident of the United States and must be a citizen or a noncitizen lawfully admitted for permanent residence. Also, some noncitizens granted a special status by the Immigration and Naturalization Service may be eligible.

### 2. How much will I receive per month in benefits?

It depends. Consult the chart on page 39. Note: This chart applies only to California.<sup>3</sup>

### 3. What does SSA consider as a “disability”?

Under the Social Security Act, “disability” means “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.”<sup>4</sup>

### 4. How can I tell if I will be found disabled by Social Security?

Unless your disability is catastrophic (for example, terminal cancer, a heart condition so bad that you are on a heart transplant waiting list, total paralysis of both legs), there is no easy way for you to tell whether you will be found disabled by Social Security. In the end, the decision of whether or not to apply for Social Security disability benefits should not be based upon whether or not the person feels that Social Security will find them disabled. Attorneys familiar with Social Security disability can make predictions about who will win and who will lose, but even they can seldom be sure. An individual should make the decision about whether or not to file for Social Security disability based upon their own belief about their condition. If the individual feels that he or she is disabled and is not going to be able to return to work in the near future, the individual should file for Social Security disability benefits. If denied, the individual should consult with an attorney familiar with Social Security disability to get an opinion as to the chances of success on appeal.<sup>5</sup>

**5. Can you receive Social Security disability benefits for \_\_\_\_\_ (insert the name of whatever disease you are interested in)?**

In almost every case, no matter what the disease is, the answer is the same: "Maybe, it just depends upon how badly you are affected by the disease." One example might be cancer. The word "cancer" is scary to anyone, but there are many cancers that can be treated and cured very quickly, with little or no lasting effect. On the other hand, of course, there are cancers that cause great suffering and ultimately death. The question in each individual case is, "How sick is this particular individual with cancer and how long is this person going to remain sick?" Skin diseases are another example. The vast majority of skin diseases, while annoying, would not be considered disabling. On the other hand, there are some uncommon, very severe skin problems that are clearly disabling. In extreme cases, psoriasis, which is not rare, may be disabling. Thus, almost without exception, the mere fact that an individual has a disease with a certain name does not guarantee that the individual either will or will not be found disabled. It all depends upon how sick the person is.<sup>6</sup>

**6. Do you have to be permanently disabled to get Social Security disability benefits?**

No. You have to have been disabled for at least a year or be expected to be disabled for at least a year or have a condition that can be expected to result in death within a year.<sup>7</sup>

**7. I have several health problems, but no one of them disables me. It is the combination that disables me. Can I get Social Security disability benefits?**

Social Security is supposed to consider the combination of impairments that an individual suffers in determining disability. Many, perhaps most, claimants for Social Security disability benefits have more than one health problem, and the combined effects of all of the health problems must be considered.<sup>8</sup>

**8. I am disabled now, but I expect that I will be able to return to work after I recover. Should I file for Social Security disability benefits?**

If you expect to be unable to work for a year or more because of illness or injury, you should file for Social Security disability benefits.<sup>9</sup>

**9. I am disabled by mental illness. Can mental illness serve as the basis for a Social Security disability claim?**

Yes. Mental illness is a frequent basis for awarding Social Security disability benefits.

**10. How does Social Security determine if I am disabled?**

Social Security is supposed to gather your medical records and carefully consider all of your health problems, as well as your age, education, and work experience. In general, Social Security is supposed to decide whether you are able to do your past work. If Social Security decides that you are unable to do your past work, they are supposed to consider whether there is any other work you can do considering your health problems and your age, education, and work experience.<sup>10</sup>

### **11. Who decides if I am disabled?**

After an individual files a Social Security disability claim, the case is sent to a disability examiner at the Disability Determination section of Social Security agency in your state. This individual, working with a doctor, makes the initial decision on the claim. If the claim is denied and the individual requests reconsideration, the case is then sent to another disability examiner at the Disability Determination section, where it goes through much the same process. If a claim is denied at reconsideration, the claimant may then request a hearing. At this point, the case is sent to an Administrative Law Judge who works for Social Security. The Administrative Law Judge makes an independent decision upon the claim. This is the only level at which the claimant and the decision maker get to see each other. <sup>11</sup>

### **12. Why does Social Security consider my age in determining whether I am disabled?**

Social Security has to consider age, because that is what the Social Security Act requires. As people get older, they become less adaptable, less able to switch to different jobs to cope with health problems. A severe foot injury that might cause a 30-year-old to switch to a job in which he or she can sit down most of the time, might disable a 60-year-old person who could not make the adjustment to a different type of work. <sup>12</sup>

### **13. Is there a list of illnesses that Social Security considers disabling?**

Not really. Because most types of illness can vary from minor to severe, there is no one simple list of illnesses that Social Security considers to be disabling. However, if an illness has reached a very severe level with certain medical hallmarks, Social Security will award benefits on the basis of medical considerations alone. <sup>13</sup>

### **14. What can I do to improve my chances of winning my Social Security disability claim?**

Be honest and complete in giving information to Social Security about what is disabling you. Many claimants, for example, fail to mention their psychiatric problems to Social Security because they are embarrassed about them. In almost all cases, individuals who were slow learners in school fail to mention this fact to Social Security, even though it can have a good deal to do with whether or not the Social Security disability claim is approved. Beyond being honest and complete with Social Security, the most important thing that you can do is just keep appealing and hire an experienced person to represent you. It is important to appeal because most claims are denied at the initial level, but are approved at higher levels of review. It is important to hire an experienced person to represent you because you do not understand the way Social Security works. Statistically, claimants who employ an attorney to represent them are much more likely to win than those who go unrepresented. <sup>14</sup>

### **15. What do I do if Social Security denies my claim for Social Security disability benefits?**

First, do not be surprised. Only about 40% of Social Security disability claims are approved at the initial level. If you are denied at the initial level, unless you have already returned to work or expect to return to work in the near future, you should appeal, that is, file a request for reconsideration. You should also consider employing an attorney to represent you. <sup>15</sup>

## **16. Why does Social Security turn down so many claims for disability benefits?**

There is no simple answer to this question. One reason is that there is no simple way to determine whether an individual is disabled. Most people who are disabled suffer from pain. There is no way of determining whether or not another individual is in pain, much less how much pain they are in. A second reason is that Social Security over the years has been more concerned with making sure that everyone who is receiving Social Security disability benefits is "truly" disabled than with making sure that everyone who is disabled receives Social Security disability benefits. An underlying reason is that Congress has always believed that, given a chance, many people will "fake" disability in order to get benefits.<sup>16</sup>

## **17. If Social Security denies my claim, can I appeal it?**

When a claim for Social Security disability benefits is denied at the initial level, the claimant may then request "reconsideration" of that decision. The case is then sent to a different disability examiner for a new decision. Unfortunately, about 80% of the time the reconsideration decision is the same as the initial decision - a denial.<sup>17</sup>

## **18. Who makes the reconsideration determination?**

A disability examiner at the Disability Determination section makes the reconsideration determination. Most of the time, the claimant does not see the disability examiner or even know his or her name.<sup>18</sup>

## **19. What are my chances of winning at reconsideration?**

Statistically about 20% of the time a claimant wins at reconsideration.<sup>19</sup>

## **20. Do I have to go through reconsideration?**

If want to appeal a denial of Social Security disability benefits, you have to go through reconsideration. There is no way to avoid it.<sup>20</sup>

## **21. What happens if Social Security denies my claim at reconsideration?**

If Social Security denies your claim at the reconsideration phase, you may request a hearing before an administrative law judge (ALJ). You cannot request a hearing until after having been denied at the reconsideration phase.<sup>21</sup>

## **22. How long does it take to get a hearing on a Social Security disability claim?**

There is much variation around the country. In California, the wait can be 6-9 months.

## **23. What is the Social Security hearing like?**

The hearings are fairly informal. The only people likely to be there are the judge, a secretary operating a tape recorder, the claimant, the claimant's attorney, and anyone else the claimant has brought with him or her. In some cases, the Administrative Law Judge has a medical doctor or vocational expert present to testify at the hearing. There is no jury nor are there any spectators at the hearing. There is no attorney at the hearing representing Social Security trying to get the judge to deny the disability claim.<sup>22</sup>

**24. What are my chances of winning at a hearing?**

Statistically, over half of the claimants who have a Social Security disability hearing win.

**25. If the Administrative Law Judge denies my claim, can I appeal any more?**

Yes. You can appeal to the Appeals Council which is still within Social Security.

**26. What is the Appeals Council?**

The Appeals Council exists to review Administrative Law Judge decisions. The Appeals Council is located in Falls Church, Virginia, and neither the claimant nor the attorney sees the people at the Appeals Council who are working on the case.<sup>23</sup>

**27. Can I appeal a case beyond Social Security to the Federal Courts?**

Yes. After being denied by the Appeals Council, it is possible for a claimant to file a civil action in the United States District Court, requesting review of Social Security's decision. A Social Security disability claim can go all the way to the Supreme Court. Perhaps once every year or two years, the United States Supreme Court actually hears an appeal about a Social Security disability case.<sup>24</sup>

**28. If I get on Social Security disability benefits and get to feeling better and want to return to work, can I return to work?**

Certainly you can return to work. Social Security wants individuals drawing disability benefits to return to work and gives them every encouragement to do so. For persons receiving Disability Insurance Benefits, Disabled Widow's and Widower's Benefits, and Disabled Adult Child Benefits, full benefits may continue for a year after an individual returns to work. Even thereafter, an individual who has to stop work in the following three years can get back on Social Security disability benefits immediately without having to file a new claim. In SSI cases, things work differently, but there is still a strong encouragement to return to work.<sup>25</sup>

**29. Where can I go to get help with my Social Security disability claim?**

For help, go to a lawyer or legal advocate who represents Social Security disability claimants on a regular basis. See page 45 for a list of agencies that may be able to help you.

**30. Do I really have to hire a lawyer to represent me in my Social Security disability claim?**

No. You can go through all of the levels of review on your own, if you wish, but statistically claimants who are represented by an attorney win a good deal more often than those who are not represented.

**31. How do lawyers who represent Social Security disability claimants get paid?**

In almost all cases, the attorney receives one-quarter of the back benefits if the claimant wins and no fee if the claimant loses.

**32. What if I can't find an attorney to represent me?**

If you cannot find an attorney to assist you, you should try to find somebody who can advocate effectively on your behalf. Ideally, you should find someone who can communicate effectively in both writing and speaking. The person who advocates for you should also be able to deal with considerable amounts of paperwork.

**33. Can alcoholics and drug addicts get Social Security disability benefits?**

Not anymore. There never were all that many people getting Social Security disability benefits on account of alcoholism or drug addiction, but Congress has now prohibited Social Security from paying disability benefits on the basis of alcoholism or drug addiction. However, alcoholics and drug addicts have heart attacks, get cancer or get sick in other ways just like everyone else. Alcoholics and drug addicts who become disabled apart from their alcoholism or drug addiction can become eligible for Social Security disability benefits.<sup>26</sup>

**34. I know someone who is on Social Security disability and he does not look a bit disabled. Why do they put all of these freeloaders on benefits?**

When it comes to disability, looks can be very deceiving. There are many people who look quite healthy but who are disabled by anyone's standard. For instance, many individuals who suffer from very severe psychiatric illness are physically healthy and able to do things such as mow their yards.<sup>27</sup>

**35. I am disabled, but I have never worked for wages. Can I get Social Security disability benefits?**

If you are poor enough, you can qualify for Supplemental Security Income (SSI) if you are disabled, even if you have never worked in the past. It is also possible to qualify for Disabled Adult Child Benefits on the account of a parent if you became disabled before age 22 or for disabled widow's or widower's benefits on the account of a late husband or wife.<sup>28</sup>

**36. I am a widow. I have not worked for wages in many years. I am disabled. Can I get Social Security disability benefits?**

If you are over 50 and became disabled within seven years after your husband or wife died or within seven years after you last drew mother's or father's benefits from Social Security, you can get Disabled Widow's or Widower's Benefits. Perhaps more important, if you are poor, you can draw Supplemental Security Income benefits no matter what age you are or when you became disabled.<sup>29</sup>

**37. I have a daughter who is disabled and unable to work. Can she get disability benefits from Social Security?**

Very possibly. If the child is under 18 and you are poor enough, the child may qualify for SSI child's disability benefits. If the child is over 18, she may qualify for SSI disability benefits without regard to the income of her parents. If her father or mother is drawing Social Security benefits of some type or is deceased, the child may be eligible for disabled adult child benefits.<sup>30</sup>

**38. My doctor says I am disabled so why is Social Security denying my Social Security**

### **disability claim?**

Social Security's position is that it is not up to your doctor to determine whether or not you are disabled. It is up to them and they will make their own decision regardless of what your doctor thinks.<sup>31</sup>

### **39. The Veteran's Administration (VA) says I am disabled, so why is Social Security denying my Social Security disability claim?**

It is Social Security's position that VA decisions are not binding upon them. Social Security and VA have very different standards for approving disability claims.<sup>32</sup>

### **40. I am 60% disabled. Do I get 60% of my Social Security disability benefits?**

No. There are no percentages of disability in Social Security disability determination. For purposes of Social Security disability benefits, you are either disabled or not disabled. There are no percentages of disability, nor any percentages of disability benefits.<sup>33</sup>

### **41. Will it help if I ask my Congressional Representative to help me get Social Security disability benefits?**

Many Social Security disability claimants become frustrated with claim delays and eventually ask their U.S. Representative or Senator to help. The local Congressional office typically will have staffers who are experienced with Social Security procedures and personnel. A "Congressional Inquiry," as it is called at Social Security, may help to get a stalled process moving again. Note that the inquiry will have no impact on how Social Security decides the outcome of the case.<sup>34</sup>

### **42. How long does it take before Social Security makes a decision once I file a claim for Social Security disability benefits?**

In most cases Social Security makes the first decision within three to four months.

### **43. How long does it take for Social Security to make a reconsideration determination on my Social Security disability claim?**

In most case Social Security makes the reconsideration determination within four months.

### **44. How long does it take for Social Security to act upon a request for Appeals Council review?**

About a year, maybe longer.

### **45. I am disabled. I need help with medical bills even more than I need a cash income. How do I get help with medical bills?**

Getting help with medical bills is usually tied up with getting cash benefits. You don't start getting help with medical bills until after you start getting the cash benefits, so you have to keep going with the Social Security disability claim in order to get the help with medical bills.<sup>35</sup>

#### **46. What is the difference between Medicare and Medicaid?**

The short answer is that Medicaid is a poverty program and Medicare isn't. Many disabled people get **Medicaid** because they are on Supplemental Security Income (SSI). This is called "categorical" Medicaid eligibility. To get SSI and thereby get Medicaid you have to be poor and disabled. Medicaid pays doctors at very low rates. People who have only Medicaid can have a hard time finding doctors willing to take them on as patients. Medicaid does pay for prescription medications. Medicaid can go back up to three months prior to the date of a Medicaid claim. Note: it is possible to apply for Medicaid directly - through a local Medicaid office - without having a companion claim for SSI.<sup>36</sup>

To receive **Medicare** it does not matter whether you are rich or poor. If you have been on Disability Insurance Benefits, Disabled Widows or Widowers Benefits or Disabled Adult Child Benefits for 24 months you qualify for Medicare. Medicare pays doctors at a higher rate than Medicaid. Almost all doctors are happy to take Medicare patients. Medicare does not begin until after a person has been on cash disability benefits for two years, and that it generally does not pay for prescription medications.

#### **47. If I get Social Security disability benefits will I get Medicare?**

If you are approved for any kind of Social Security disability benefit (other than SSI) you will get Medicare after you have been entitled to Social Security disability benefits for two years.<sup>37</sup>

#### **48. If I get Social Security disability benefits will I get Medicaid?**

If you are approved for SSI you will get Medicaid. It is possible to get both Medicare and Medicaid if you are entitled to SSI and some other type of Social Security disability benefit.<sup>38</sup>

#### **49. My child is disabled. Does s/he qualify for SSI benefits?**

Children under age 18 can qualify for SSI if they meet the definition of disability and their income and resources are within the allowed limits.

#### **50. Does where I live affect how much SSI I get?**

Yes it can. If you live in your own house or apartment, regardless of whether you own or rent, you may get up to the maximum SSI amount payable in your state.

You can also get up to the maximum if you live in someone else's household as long as you pay your food and shelter costs. However, if you live in someone else's household and don't pay your food and shelter costs or pay only part of your food and shelter costs, your SSI benefit may be reduced by up to one-third. See the chart on page 39.

#### **51. Do my living expenses affect my SSI benefit?**

Generally, they don't. Your SSI benefit depends on your income - not on your expenses. However, if someone else helps you pay your living expenses, your benefits could be lowered

#### **52. What if someone else helps pay my living expenses?**

Any food, clothing, or shelter you get from someone else and don't pay for may reduce your SSI



benefits. However, your benefits will not be reduced if these items are provided by a spouse you live with, or, if you are a child, by your parents with whom you live.

There is a limit on how much SSA may count. The limit is about one third of the maximum federal SSI amount payable for that month. Items you receive that cannot be used for food, clothing or shelter are not considered income and therefore, will not reduce your SSI benefit. For example, if someone buys you a household or personal item, such as a small kitchen appliance or a piece of jewelry of modest value, it is not income and will not reduce your SSI benefit.<sup>39</sup>

### **53. What about people in institutions?**

Generally, people who live in institutions such as hospitals, nursing homes, prisons, or jails are not eligible for SSI or are only eligible for a maximum of \$30 a month (some states supplement this \$30 payment).<sup>40</sup>

### **54. What about the homeless?**

Having a permanent residence is not a requirement for receiving SSI. If you are homeless, you may receive up to maximum SSI amount payable in your state. In addition, receiving SSI may allow you get to permanent housing.

If you live in a public shelter, you can receive SSI benefits for up to 6 months out of any 9 months that you live there.<sup>41</sup>

### **55. Under what circumstances can a Non-Citizen be eligible for SSI?**

A non-citizen may be eligible for SSI if he or she meets the requirements of the laws for noncitizens that went into effect on August 22, 1996. In general, beginning August 22, 1996, most non-citizens must meet two requirements to be potentially eligible for SSI:

1. Be in a qualified category (see question 56 below); and
2. Meet a condition that allows qualified non-citizens to get SSI

A non-citizen must also meet all of the other requirements for SSI eligibility including the limits on income and resources.<sup>42</sup>

### **56. Who is a Qualified Non-Citizen?**

There are 8 categories. You are qualified if the INS (now the Department of Homeland Security) says you are in one of the following categories:

1. Lawfully Admitted for Permanent Residence (LAPR) in the US, including “Amerasian immigrant;”
2. Granted conditional entry under section 203(a)(7) of the Immigration and Nationality Act (INA) as in effect before 4/1/1980;
3. Paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year;

4. Refugee admitted to the U.S. under section 207 of the INA;
5. Granted Asylum under Section 208 of the INA;
6. Deportation is being withheld under section 243(h) of the INA as in effect before 4/1/97, or removal is withheld under 241(b)(3) of the INA;
7. Cuban and Haitian entrant under section 510(e) of the refugee Education Assistance Act of 1980; or
8. Under certain circumstances, you, your child, or your parent has been subjected to battery or extreme cruelty.<sup>43</sup>

**57. Under what conditions may a Qualified Non-Citizen be eligible for SSI?**

If you are in one of the above 8 categories, you may be eligible for SSI if you also meet one of the following conditions:

- A. You were receiving SSI on 8/22/96 and you are lawfully residing in the U.S.;
- B. You are a LAPR with 40 qualifying quarters of work;
  1. Work done by your spouse or parent may also count toward the 40 quarters of work, but only for getting SSI.
  2. Quarters of work earned after 12/31/96 cannot be counted if you your spouse, or your parent who worked received certain benefits from the US government based on limited income and resources during that period.

**IMPORTANT:** If you entered the U.S. for the first time on or after 8/22/96, then you may not be eligible for SSI for the first five years as a LAPR even if you have 40 qualifying quarters or earnings
- C. You were lawfully residing in the U.S. on 8/22/96 and you are blind;
- D. You may receive SSI for a maximum of seven years from the date INS (now, the Department of Homeland Security) granted you a status in one of the following categories, and the status was granted within seven years of applying for SSI:
  1. refugee under Section 207 of the INA;
  2. asylee under section 208 of the INA;
  3. non-citizen whose deportation was withheld under section 243(h) of the INA or whose removal is withheld under section 241(b)(3) of the INA;
  4. Amerasian immigrant, under section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as amended.

**IMPORTANT:** You may be eligible for SSI beyond the seven year period if you are in one of these categories, and you also meet one of the above conditions.<sup>44</sup>

**58. Am I eligible for Food Stamps or public assistance if I receive SSI/SSDI?**

In California, no. However you may be able to receive food stamps or other public assistance while your SSI/SSDI benefit application is pending, if your application for SSI benefits is denied, or if you move to another state.<sup>45</sup>

### **III. INCARCERATION AND SSI**

This section gives you an overview of how incarceration affects SSI/SSDI. This information is courtesy of the Bazelon Center for Mental Health Law. It was originally published in their advocacy manual entitled *Finding the Key: An Explanation of Federal Medicaid and Disability Program Rules*, which is available on their website [http:// www.bazelon.org/findingthekey.html](http://www.bazelon.org/findingthekey.html)

#### **WHEN PRISONERS LOSE SSI**

People who have been getting SSI or SSDI payments when arrested cannot receive benefits while in jail. But whether and how they remain eligible when released varies.

Generally, the length of time a person is in jail determines whether, or when, federal SSI benefits will be affected. The monthly payments are nearly always interrupted while someone is in jail, but benefits are payable up until the time of incarceration and sometimes a little longer, and can resume shortly thereafter, as long as the person has been in jail less than a year (see box on page 15).

When incarceration is for less than 12 consecutive months, the federal Social Security Administration (SSA) considers this a "suspension" and payments should resume soon after the person leaves jail-as long as SSA is informed of the release and the person submits a simple form with evidence showing that he or she again meets the financial requirements.<sup>46</sup> SSA presumes that these individuals remain disabled under federal rules.

To complete this reapplication process, the Social Security office must be able to verify that the person has been released. Families, community mental health workers or jail administrators can assist people in this situation by making sure SSA is alerted to the need to resume benefits and told where to send the checks.

People who have been incarcerated for a year or more and have had their benefits suspended for at least 12 months must file a completely new application for SSI upon their release. They will have to show that they are still disabled under the eligibility standards (see box on next page).

## HOW TIME IN JAIL AFFECTS ELIGIBILITY FOR SSI

**In jail less than one calendar month:** Prisoner remains eligible for SSI and should receive the full cash benefit. For example, someone who enters jail on February 10 and is released before midnight March 31 should lose no cash payments.

**In jail throughout a calendar month:** Prisoner will have SSI payments suspended but not terminated<sup>47</sup>. This means that an person who is in jail on the first of the month and stays the whole month is not eligible for a cash payment for that month.

For example, someone who enters jail on February 10 and is not released until April 1 will not lose February's payment (not being in jail for the whole month) but will lose the March payment.

**In jail at least one month and then released after the first of another month:** Prisoner can receive an SSI cash payment for part of the month in which he or she is released.<sup>48</sup> For example, someone who enters jail on February 10 and is released May 15 the same year will not lose the February payment, but will lose March and April benefits. In May, the person will be eligible for half of the monthly benefit. While this will be paid eventually, it could be delayed if the Social Security Administration (SSA) is not informed promptly that the individual has been released.

**In jail for 12 consecutive calendar months:** Prisoner's eligibility is terminated.<sup>49</sup> Technically, termination occurs after 12 continuous months of suspension. Only full months count.

For example, someone who enters jail on February 1st of one year and is released on February 10th the following year will have SSI eligibility terminated because benefits were suspended for 12 continuous months. This person will have to file a new application and resubmit evidence of disability. But someone who enters jail on February 10th of one year and is released on February 10 a year later has benefits suspended for March through January and prorated for February of the second year. This person's eligibility will not be terminated because benefits were not suspended for 12 continuous months.

## WHEN PRISONERS LOSE SSDI

People who qualify for SSDI remain eligible as long as they meet the federal definition of disability. SSDI benefits are **suspended** following a conviction and confinement in jail for 30 days or longer. But SSDI benefits are not terminated, no matter how long the term. However, Social Security must verify that the person is no longer in a correctional facility before payments can resume. Specifically:

1. SSDI benefits are suspended if someone has been convicted and confined in jail longer than 30 days, w
2. SSDI benefits are suspended for any 30 day period during which an individual is confined in a jail or prison in connection with a verdict of not guilty by reason of insanity or guilty but in
3. SSDI benefits what were already payed are recovered. For example, someone arrested on the fifth of the month who has already cashed that month's check will have future checks reduced until the benefits paid for that month are recovered.

Federal rules on payment of SSDI benefits to prisoners were different for people incarcerated before April 1, 2000.<sup>52</sup> The above description applies to everyone incarcerated since that date. A worker's dependents, such as spouse or child, sometimes receive SSDI. Those payments are not suspended or terminated when the worker is in jail and they continue even when the worker loses benefits.<sup>53</sup>

## QUALIFYING FOR SSI OR SSDI UPON RELEASE

Prisoners not receiving benefits when sent to jail can apply for SSI or SSDI while incarcerated, in anticipation of their release. They usually need assistance, however, to obtain the appropriate forms and gather the necessary evidence.

Normally, review of an application takes about three months, so a prisoner should apply as long as possible before the release date.

SSA will assess eligibility based on the application. If it is approved before the prisoner's release, payments will begin as of the first day of the calendar month following release.<sup>54</sup> If the application is approved after the prisoner is released, benefits are payable at that time, and SSI (but not SSDI) benefits are backdated to the first day of the month following release.

An individual with a severe mental illness may also qualify for advance emergency payments. To be eligible, people must demonstrate:

- a financial emergency;
- that they are likely to qualify for assistance; and
- that they have not already received assistance for that benefit period.

## **WHY BENEFITS ARE LOST AND WHAT CAN BE DONE ABOUT IT**

Jails and prisons have an incentive to inform SSA that a person is confined; they receive federal payments when they supply information resulting in suspension or termination of SSI or SSDI benefits. But they have no such incentive to advise SSA when someone is released so that benefits can be restored.

Jails and prisons can enter into agreements with SSA to provide monthly reports of prisoners' names, Social Security numbers, dates of birth, confinement dates and other information. The institution receives \$400 when this information is sent within 30 days of the prisoner's arrival and \$200 if it is sent within 90 days.<sup>55</sup>

Jails, prisons and hospitals can also enter into pre-release agreements with the local Social Security office, which will help their staff learn the rules for pre-release processing of applications and reapplications for SSI.<sup>56</sup> When such an agreement exists, SSA processes claims more quickly, prisoners have assistance in gathering the information needed to support their application, and benefits are often payable immediately upon release or shortly thereafter.

### **PRE-RELEASE AGREEMENTS**

Jails agree to: notify SSA of prisoners likely to meet SSI criteria who will be released within the next 30 days; provide to SSA current medical evidence and nonmedical information that may support the prisoner's claim; provide to SSA the anticipated release date and notify SSA if that changes; and notify SSA when the prisoner is actually released.

SSA agrees to train jail staff about SSI rules and work with them to ensure that the application procedures work smoothly; provide a contact person at Social Security to assist jail staff with the pre-release procedure; process reapplications and new applications as quickly as possible; and promptly notify the jail of the decision on the released prisoner's eligibility.

## **HEALTH CARE COVERAGE**

Medicare and Medicaid are two sources of health coverage. People eligible for SSDI (and those over age 65) are covered by Medicare, after a 24-month wait. Low-income individuals qualify for Medicaid in various ways; in most states anyone who qualifies for SSI is covered. Medicaid provides better mental health care coverage than Medicare.

## **MEDICAID**

Medicaid is a joint federal-state program. To qualify, a person must fall into one of several eligibility categories. Once eligible, the individual is covered by a package of services defined by the state under broad federal requirements. Federal law requires some services to be available, such as physician services and general hospital care. Others are offered at state option-among them, various community-based mental health clinic and rehabilitative services. As a result, Medicaid coverage varies from state to state. However, all states cover a significant array of mental health services for people with severe mental illnesses.

Most prisoners with severe mental illnesses have incomes below the Medicaid limit and may therefore be eligible for coverage. In California, their eligibility for SSI is what qualifies them for Medicaid.

Some low-income individuals do not receive SSI or SSDI disability benefits, either because their disability is not severe enough to meet strict federal standards or because they have not applied. But they may still be eligible for Medicaid.

Currently, California covers people who become "medically needy" when their income is reduced by high health care expenses.

## **MEDICAID RULES ON PRISONERS**

Under Medicaid law, states do not receive federal matching funds for services provided to individuals in jail or prison.<sup>57</sup> However, federal law does not require states to terminate prisoners' eligibility, and prisoners may remain on the Medicaid rolls even though services received while incarcerated are not covered.<sup>58</sup> Accordingly, someone who had a Medicaid card when incarcerated may be able to use it again immediately after release to obtain needed services and medication.

However, the situation for prisoners who qualify for Medicaid through their eligibility for SSI can be complicated. Everyone whose SSI eligibility is terminated will lose Medicaid. When SSI benefits are suspended due to incarceration, states have the option to - and generally do - terminate a prisoner's Medicaid eligibility.

When a prisoner's Medicaid eligibility is not tied to SSI, the state has the flexibility under federal law to suspend the eligibility status during incarceration. But the federal Medicaid rules establish only minimum requirements, while states are permitted to impose more restrictive policies.

Under federal rules, eligibility should be reinstated upon release unless the person is no longer eligible (see box on next page). Before ending someone's Medicaid eligibility, states must make a redetermination of the person's potential for qualifying under all the state's eligibility categories.<sup>59</sup> This redetermination need not be conducted until release is imminent, but if the released prisoner still meets the state's eligibility standards for Medicaid, eligibility should not be ended. Regrettably, this redetermination often does not occur.

Even prisoners who keep their Medicaid eligibility may lose Medicaid coverage unnecessarily because of procedures in correctional facilities. Something as simple as the loss of a Medicaid card following arrest can make it impossible to obtain mental health services from Medicaid providers upon release. This often happens because jails and prisons take possession of all personal property when booking a person. In many jurisdictions, this property is destroyed if it is not claimed within a certain time. Prisoners cannot claim the property themselves and if they have no one to do it for them, their Medicaid card is destroyed.

There is one exception to the rule that no Medicaid reimbursement is available for prisoners. When someone is transferred from a correctional facility to a hospital for acute health services (for example, an appendectomy), the hospital can claim federal Medicaid reimbursement for this service. Also, if a person is in an institution temporarily pending "other arrangements appropriate



to his needs," services may remain Medicaid-reimbursable.<sup>60</sup>

<b>FEDERAL RULES ON MEDICAID REINSTATEMENT</b>
Prisoners can have their Medicaid suspended.
Upon release, federal policy requires that their benefits resume.
Many individuals will be incarcerated for so long that their Medicaid benefits will have been suspended for longer than the state's customary period of time after which a redetermination of eligibility is conducted (time varies by state). The state will reassess whether these prisoners remain eligible for Medicaid. However, this assessment should be conducted prior to release because, under federal policy, a state may not drop someone from Medicaid without determining whether or not the person can qualify under any of the state's eligibility categories. <sup>61</sup>
States are permitted to use simplified procedures for redetermining the eligibility of individuals who have been incarcerated, according to federal HCFA officials. <sup>62</sup> Regardless of the simplified procedures used, unless a state has determined that an individual is no longer eligible for Medicaid, states must ensure that incarcerated individuals are returned to the rolls immediately upon release. Thus, allowing individuals to go directly to a Medicaid provider and demonstrate his/her Medicaid eligibility. <sup>63</sup>

## **COVERAGE AFTER RELEASE**

When Medicaid eligibility is linked to SSI, a person may have to jump through many administrative hoops before Medicaid benefits resume, depending on state policy and administrative procedures. For example, a former prisoner may have to visit the local SSA and state Medicaid offices to confirm that he or she has been released and complete other administrative paperwork. As a result, people on SSI may have no health care coverage during the time between their release from jail/prison and reinstatement of their SSI payments (normally at least one or two weeks).

One way services can be covered immediately after someone is released from jail/prison is for the state to continue the person's Medicaid eligibility pending reinstatement on SSI, which will in turn restore federal Medicaid eligibility. Once the individual's SSI is reinstated, the federal government will provide retroactive reimbursement for Medicaid-covered services furnished for up to three months after the person was released. This means that even though federal dollars may not be available immediately for services provided after release to former prisoners whose Medicaid eligibility is tied to SSI, nearly all of these individuals will eventually be covered. Providers can be paid by the state and the state will eventually receive federal funds. The state will remain fully liable only for services to the very few individuals who are not found re-eligible for SSI and Medicaid.

**MEDICARE**

Medicare coverage is also suspended when someone is incarcerated. It will not resume until the persons's SSDI payments resume. For more information on Medicare, call 1-800-MEDICARE (1-800-633-4227)

## IV. INITIAL APPLICATION

### A. OVERVIEW OF THE INITIAL APPLICATION PHASE<sup>64</sup>

This application process can be rather long and involved, but this manual will work with you through the process and try to assist you with the relevant issues that may arise.

The initial application stage for SSI/SSDI begins when you meet your client and help him or her fill out the initial application forms. These forms should be submitted at the Local Social Security District Office. To find out which office is closest to you, see page 38.

After the forms are received and reviewed by a claims representative at the District Office, the file is sent to the Disability and Adult Programs Division (DAPD), for disability eligibility evaluation.

At the DAPD the file is assigned to a disability analyst. This analyst's assignment is to gather and evaluate information regarding the claimant's disability. The analyst should request medical records from the sources listed by the claimant in the initial application forms.

You can obtain the name and phone number of the analyst assigned to your client's case by calling Master Files at the DAPD.

As an advocate, you should request medical records from your client's medical sources. Often, the analyst is not able to obtain complete records for the claimant, thus it is important for the advocate to gather all of these records, and eventually send them to the analyst. See page 40 for a sample letter to the "treating physician."

It is a good idea to contact the analyst and introduce yourself. Tell the analyst that you are:

- working with the claimant
- will help gather medical records
- a contact person for the claimant

Basically, it is a good idea to let the analyst know that you are working on the case too, and try to develop a good working relationship with him or her.

Often times, comprehensive medical documentation does not exist for your client. This is particularly true for clients who are homeless. In these instances, analysts will purchase **consultative examinations (CEs)** for claimants.

In many instances, especially in the case of psychological CE, you may want to avoid having your client see these doctors. This is because these doctors often do not see clients for the appropriate time required for such examinations. Many psychological CEs last between 10-15 minutes, and seem to invariably find that our clients are able to work.

The best source of information on your client is your client's treating doctor. If your client has such a doctor, request a report from him or her. Send this doctor a report request letter, and a 1002 form. The 1002 form is what the DAPD gives to doctors to fill out, regarding the claimant's disability. Send the doctor the appropriate form based on your client's disability.

If your client does not have a treating doctor, try to arrange for an evaluation through a volunteer or county doctor.

If you are unable to obtain an evaluation this way, then you have no choice but to have your client attend a CE. You should note that you, or your client, can object to a particular consultative examiner.

If your client goes to a CE, make sure to monitor and document for how long the CE lasts, as well as the quality of the CE.

If you think the CE was of low quality, was conducted cursorily, or have any other objections, write to the Public Relations Specialist (PRS) at the appropriate DAPD Branch. Individual complaints to the PRS are taken seriously and can lead to an investigation of these examiners. It is imperative though, that this complaint be received soon after the CE takes place, while the file is still at the DAPD.

You should also send a Third Party Questionnaire to someone who knows the claimant and understands his or her disability, and the way it affects the person's daily activities. If the claimant has no friends or family who are willing or able to do this, you can fill out this questionnaire or the Community Outreach Questionnaire. Make sure to comment on how the claimant's activities of daily living are affected by his or her disabling condition.

Once you have gathered all available medical information, you are ready to write a **persuasive letter** to your client's analyst, explaining why the client's disability meets the requirements of permanent disability. You should consider using the five step evaluation process. Analysts use this evaluation process to determine if claimants are disabled. See section D, Initial Application: Persuasive Letter, on page 29 for an overview of the five step evaluation process.

If throughout the process you have any problems and are unable to resolve them with the analyst, talk to the analyst's supervisor, the Team Manager. If you cannot work with the Team Manager, talk to the Case Adjudications Bureau Chief- keep going up the ladder until your client's needs are met.

Once your client's disability has been evaluated, the file is sent back to the District Office.

If your client was found disabled, the next step is to go to the District Office for a final meeting. You should both receive a notice in the mail to do so.

If your client was found not disabled, s/he will receive a denial letter. You have sixty days to file for a reconsideration.

## **B. INITIAL APPLICATION: FORMS<sup>65</sup>**

When beginning the application process, it is important to fill out the following forms. All are available from SSA.

### **1. APPOINTMENT OF REPRESENTATIVE FORM**

This form informs the SSA that you are officially working with the claimant as his or her legal representative. This form should be submitted with the application forms. It is important to have this form on file, as it should insure that all copies of notices are sent to both you and the claimant.

## **2. DISABILITY REPORT**

This form is the first chance for the claimant to explain his or her disability. This form is critical to the client's application and should be filled out carefully.

Some particularly important questions for this form are:

What is your disabling condition? It is important to list all of your client's impairments in this section, including all mental and physical impairments.

To help you uncover hidden mental disabilities, ask your client some questions:

- Do you have trouble sleeping?
- Do you have trouble concentrating?
- Have you ever been hospitalized without your consent?
- Have you ever had bad nerves? What was that like?

### **Information about your Medical Records.**

Be sure to list the names, addresses, and phone numbers of the client's doctors and hospitalizations. Analysts will only contact the sources listed in this section for medical evidence, so it is crucial that this section be as complete as possible.

### **Information about your Activities**

This section of the form provides an opportunity to describe the extent of your client's disability, and how it affects daily functioning. It is important to emphasize the actual limitations faced by the client.

**Information about the work you did.** Talk to your client carefully to understand exactly how his or her ability to work changed as his or her condition became more and more disabling.

### **Remarks.**

In this section, you may include clarifying comments about work history, failed work attempts, or the fact that the client needed your help in filling out the form.

Only use this form if your client has a substantial work history in the previous 15 years.

When describing the kind of physical activity required at the previous job, always include the most strenuous work done.

Include failed work attempts in this section.

## **3. RELEASE FORMS**

It is important to send release forms to doctors or hospitals so that you may receive medical evidence regarding your client. A release form is anything in which the applicant gives permission for his/her medical records to be released to the advocate.

## **4. DAILY QUESTIONNAIRE FORM**

This is the most common form that DAPD sends to clients.

Ask questions so you get as much detail as possible. Paint a picture for the analyst to show what

this client's life is like. Specific examples are best. For example: I cannot cook because I often have so much trouble remembering things that I forget to turn the stove off; I never answer my telephone because I am afraid of who will be on the line; I do not go shopping because I cannot lift any heavy bags.

## **5. THIRD PARTY QUESTIONNAIRE FORM**

This form should be filled out by the claimant's family or friends - someone who understands the claimant's disability and how his or her condition affects daily living.

This questionnaire tries to assess the client's functional limitations.

Again, ask questions so you get as much detail as possible. Paint a picture for the analyst to show what this client's life is like. Specific examples are best. For example: She does not have any friends because she constantly gets into fights and alienates people; she does not sleep through the nights because she is awakened by panic attacks; he cannot use public transportation because he cannot be in enclosed spaces around so many people.

## **6. COMMUNITY OUTREACH FORM**

You or someone at your agency can fill out this form. It is similar to a Third Party Questionnaire, and asks you about your interactions with the claimant.

Include details. Paint a picture for the analyst to show what the client's life is like. Specific examples are best, e.g. it took us several hours to fill out the Disability Report because she had so much trouble focusing, and became so fixated on trying to remember details that she just could not remember.

## **TIPS FOR FILLING OUT THIRD PARTY QUESTIONNAIRE AND COMMUNITY OUTREACH FORMS**

Following are some general tips for the letter writer supporting a claimant's application for SSI benefits. These tips are directed to the letter writer; the "claimant" is the person applying for benefits.

### **What is Useful<sup>66</sup>**

Do not feel that you have to write about every subject area described below. Write about what you know. If the claimant is not having problems in certain areas (for example, mental or emotional functioning) or you do not really know the claimant well enough to comment, do not discuss that area. Keep your letter to the point - the longer and more difficult it is to read the less likely it will get read. Along these lines, it's best if you can type the letter. If not, write in clear handwriting to the best of your ability. Do not worry about spelling or grammar. Use your language, do not try to use formal or legal language. Make sure you sign and date your letter.

1. Write the letter in your own words simply describing the claimant's life based on what you personally observe, not on what others have told you.
2. Explain your relationship to the claimant, how long you've known him or her, and how often you get to see or talk with him or her.

3. Important principles to follow: Tell the truth. Don't exaggerate, but don't minimize the claimant's difficulties. Write from personal knowledge -- your own observations. Provide relevant details and examples but don't ramble.
4. If you have known the claimant for a long time, describe how the claimant has changed since becoming ill or disabled, describing his or her life both before and after the disability began. In particular, give specific examples of activities or tasks the claimant used to do but which he or she can no longer perform or can do only with assistance, breaks, etc.
5. Describe the limitations you have observed in the claimant's ability to engage in everyday activities such as running errands, cleaning house, cooking, shopping, engaging in projects or hobbies. Examples of limitations may be the need to take frequent breaks and rest; the onset of pain or other symptoms that require stopping an activity; the inability to lift objects over a certain weight, etc. Remember these are just examples - write about the limitations that you have actually observed.
6. If the claimant has limited his or her activities significantly to avoid symptoms, describe how limited the activities are and contrast this with how the claimant was before he or she became ill.
7. If the claimant has a physical disability, describe difficulties you've observed with sitting, standing, walking, lifting, bending, etc.
8. If you or someone else help the claimant, write about what help is needed, how often it is needed and how long this kind of assistance has been necessary.
9. If the claimant has developed depression or has other mental or emotional difficulties (even if they are the result of his or her physical symptoms) describe the difficulties you have observed in his or her ability to understand, remember and carry out instructions, concentrate and maintain attention, or to respond appropriately to others in a social or work setting. Give specific examples that you have noticed.
10. If fatigue, sleeplessness, pain or depression is involved, you may have noticed difficulty concentrating, loss of concentration or attention, forgetfulness, a quick temper, avoidance of other people, crying spells, or poor stress tolerance. Describe what you have seen and describe whether you have observed any "trigger" for these symptoms.
11. If the claimant has good days and bad days, describe what the claimant does on a good day and what he or she does on a bad day. Indicate how often the claimant seems to have a bad day versus the number of good days.
12. If you know that the claimant had a hard time trying to work, tell about these problems and how the claimant tried to cope.

### **What is not Useful<sup>67</sup>**

As long as you tell the truth, write from personal knowledge and don't exaggerate the claimant's difficulty, there really is nothing you shouldn't say. But here are a few tips:

1. Unless you have a medical background or have some other reason to know about the claimant's medical condition, don't write about medical issues, for example by giving a medical diagnosis or stating that the claimant's symptom is caused by a particular medical condition. Leave this for the

doctors.

2. Don't try to play to sympathy. Disability is based on the claimant's inability to work, not on whether the claimant is a nice person or needs money very badly, or has children he or she is having trouble supporting, etc.

3. Don't write about the claimant's inability to get a job or that nobody would hire the claimant with his medical history. The only thing that matters is the claimant's ability to perform a job.

4. Don't compare the claimant to others who seem less disabled but get disability benefits. Such comparisons don't help and may even give the wrong impression.

5. Generally, don't state opinions. State facts based on your observations. Specifically, don't draw conclusions that the claimant can't work or is disabled. The one exception may be if you are an employer and in a position in which you can state that as an employer you would not hire the claimant citing the specific reasons why. Ultimately, however, Social Security makes the decision about disability, and it will disregard your opinions on the matter. Your personal observations are much more important.

6. Don't argue the case.

## **C. INITIAL APPLICATION: MEDICAL RECORDS**

### **1. TREATING DOCTOR'S REPORT REQUEST LETTER**

You will need to write a letter to the claimant's treating doctor.

See page 40 for a sample letter to a treating doctor. Be sure to include the appropriate 1002 form.

Along with the letter, and the form, send the doctor a copy of the Guidelines for Information in Doctor's report.

Often times it is necessary to call the doctor after the letter is sent out. This doctor's report is extremely vital to your client's application, so it is important to make this follow-up call.

### **2. QUESTIONNAIRES FOR DOCTORS (1002 FORMS)**

The best source of information on the applicant is the applicant's treating doctor.

If the applicant has such a doctor, request a report from him or her. Send the doctor a report request letter, and a 1002 form. The 1002 form is what the DAPD gives to doctors to fill out regarding the applicant's disability. Send the doctor the appropriate form based on your client's disability.

1002 Forms are available from SSA.



There are 13 separate 1002 Forms, each one addressing a different class of disability. They are:

- Musculoskeletal System
- Special Senses and Speech
- Respiratory System
- Cardiovascular System
- Digestive System
- Genito-Urinary System
- Hemic and Lymphatic System
- Skin
- Endocrine System and Obesity
- Neurological
- Mental Disorders
- Neoplastic Diseases, Malignant
- Immune System

If you are not sure which one to send, consult the doctor.

### **3. THE LISTINGS OF IMPAIRMENTS**

The **Listings of Impairments** describes, for each major body system, impairments that are considered severe enough to prevent a person from doing any gainful activity. The Listings provide the definitions and perimeters of each impairment. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months. The criteria in the Listings of Impairments are applicable to evaluation of claims for disability benefits or payments under both SSDI and SSI.<sup>68</sup>

The criteria in the Listings of Impairments apply only to Step Three of the multi-step sequential evaluation process (see following section). At that step, the presence of an impairment that meets the criteria in the Listing of Impairments (or that is of equal severity) is usually sufficient to establish that an individual who is not working is disabled. However, the absence of a listing-level impairment does not mean the individual is not disabled. Rather, it merely requires SSA to move on to the next step of the process.<sup>69</sup>

In its entirety, the Listings of Impairments is nearly 200 pages long. Its length prohibits us from including it in this manual. The Listings of Impairments is available online at [ssa.gov](http://ssa.gov)

The Listings of Impairments is also published in SSA's Publication *Disability Evaluation Under Social Security*. Its publication number is 64-039. This publication is updated every two years. If you do not have access to the Internet, you may be able to borrow an attorney or advocate's old copy. Another option is to contact an attorney or advocate and ask them to photocopy or print the sections applicable to your situation. See pages 45-48 for a list of attorneys and advocacy agencies who do SSI work.

When arguing your case, either in the written or oral form, it is important to frame the disability according to the Listings as much as possible. See the sample Persuasive Letter on page 41 for an example this.

## **D. INITIAL APPLICATION: PERSUASIVE LETTER**

### **1. OVERVIEW OF WRITING A PERSUASIVE LETTER<sup>70</sup>**

Before writing a persuasive letter to the analyst, you should consider how the medical evidence points to a finding of disabled.

Consider the **five-step sequential evaluation process**.

Briefly, the sequential evaluation process is the method used by analysts to determine claimants are disabled.

Step 1: clients who are homeless or at risk of homelessness, have no trouble meeting this step. They are not earning substantial gainful activity (SGA). For SSI applicants the SGA limit is \$500 per month. For SSDI applicants there is no resource limit. Proceed to step 2.

Step 2: This step asks if the claimant has a severe impairment. The use of 'severe' in this instance is an overstatement. Any physical or mental impairment (other than a cold or a scar) should qualify. You can go to step 3.

Step 3: Does the claimant meet or equal the Listings? Here is your client's best opportunity for a quick and favorable decision. Take a look at the Listings. If the medical evidence demonstrates that the claimant's disability fulfills the criteria for any one of the Listings, he or she can be found disabled at the third step of the sequential evaluation process.

If the claimant does not meet or equal the listings, go to step 4.

Step 4: Can the claimant perform past relevant work? This work is the occupation which the claimant has performed for the longest amount of time. Can he or she perform the physical activities required for that kind of job (reaching, sitting, bending, standing, lifting, etc.); can he or she focus and concentrate, follow directions, complete tasks in a timely way, as required by such a job? If not, go to step 5.

Step 5: This step asks if there is any job existing in significant numbers in the national economy which the claimant can perform. This step is analyzed based upon the claimant's Residual Functional Capacity (RFC). The RFC mostly concerns itself with the exertional capabilities of the claimant to do sedentary, light, medium, heavy, or very heavy work. This step also considers the claimant's non-exertional limitations (mental RFC), as well as factors such as age, education, work experience and skills. Take a look at the Grids, this can help you make a fifth step analysis.

Write a persuasive letter to the analyst based on your analysis of the sequential evaluation process.

Advocate for your client. This letter should point to the medical records and questionnaires to underline how the existing evidence directs a finding of disabled.

See Page 41 for a sample persuasive letter.

## **2. SAMPLE QUESTIONS TO ASK THE APPLICANT<sup>71</sup>**

These are questions you can ask the applicant to help you paint a better picture of his or her disability for SSA.

**I. About the Disability** (These questions are aimed at assessing the severity of the client's impairment. The sample questions here are ones you might ask a client who suffers from anxiety/panic attacks. You would want to tailor these questions to your client's specific disability.)

- A. What prevents you from being able to work?
- B. Do you have anxiety/panic attacks? How often do they occur?
  - 1. Can you give me an example of how anxiety/panic attacks prevent you from being able to work?
  - 2. What happens to you during an anxiety attack? What are the emotional/physical manifestations?
  - 3. How long have you had this condition?
  - 4. What would happen to you when you were a child?
  - 5. When was the last time you experienced an anxiety attack? What happened to you on this occasion? What triggered the anxiety attack?
  - 6. Can you give me another example of one?
  - 7. Have you ever tried to overcome an anxiety attack?
  - 8. How do you cope with these attacks? What do you do when you have a panic attack?

## **II. Medical Treatment**

- A. Are you currently on medication?
- B. What does your doctor say about your condition?
- C. How often do you see your doctor?
- D. How long have you been seeing him/her?

**III. Activities** (These questions are aimed at assessing how the client's condition effects his/her ability to function and engage in simple daily activities. Some relevant questions may also appear on the Activities of Daily Living questionnaire, so you may want to review this questionnaire with your client before the hearing.)

- A. What do you do on a typical day?
  - 1. What was your day like yesterday?
  - 2. How did your day start?
  - 3. What did you do in the morning?
  - 4. How did you spend your afternoon?

5. Do you drive?
  6. Do you take public transportation? Why/why not?
- B. How do you obtain food/nutrition?
1. Do you go shopping?
  2. How often?
  3. What do you get?
  4. Do find the task easy or difficult? Why?
- C. Describe your sleeping habits
1. Do you sleep well or poorly?
  2. What disrupts your sleeping? (nightmares, racing thoughts)
  3. How often does this occur?
  4. What do you do when you find yourself sleeping poorly?
- D. How do you live?
1. Do you keep your place clean? Why or why not?
  2. Do you maintain your hygiene? Why or why not?
  3. Do you go out every day? Why or why not?

**IV. Socializing** (These questions assess the impact of the client's disability on his/her ability to function and interact with others.)

- A. Do you have friends? Why? Why not?
- B. How often do you see them?
- C. Describe your friends.
- D. What do you do when you get together with them?
- E. What about intimate relationships?
- F. Do you have family/friends in the area?
- G. How often do you see them? Why?
- H. Do you ever have difficulties with people? (For example, some people have difficulties with others on the street, at the gas station, at the store.)
- I. What are your hobbies/favorite activities?

**V. Past Work History** (These questions will reveal the client's past work history and the impact of the client's disability on his/her ability to work and be in a work environment; may also reveal how the disability has prevented from engaging in work on a regular basis.)

- A. Can you describe the jobs you have performed in the past 15 years? (Starting with the most recent)
- B. What were your job responsibilities?
- C. How were you doing on the job? (Were you performing well? If not, why? What parts of the job were difficult?)
- D. How long did you work there?
- E. Why did you leave?

**VI. Ability to Work**

- A. Do you think that if you tried, you could go to work on a regular basis? Why or why not?
- B. What do you think would happen if you went back to work tomorrow?

- C. Do you think you could perform any of your past jobs? Why or why not?
- D. Would you like to work if you could? (Only ask this if your client would like to work and would be sincere)

**VII. Other questions to consider when disability is based on a mental impairment.** (These questions are intended to assess the severity of the client's disability and to reveal how the disability limits the client's ability to concentrate, remember/carry out tasks/ instructions, be punctual at work, interact well with co-workers, supervisors and the public)

- A. How is your appetite?
- B. Do you eat regularly?
- C. How is your energy level?
- D. Do you have any trouble remembering things? Examples of being forgetful? (Forgot why you went to the store, where you live, why you got on the bus, where you were going)
- E. How is your ability to focus your attention, to concentrate?
- F. Sometimes when people are depressed, as you have described yourself, they hear or see things.
  - 1. Do you ever hear or see things? How often?
  - 2. Have you ever acted on these things?
- G. You described yourself as an angry person.
  - 1. Do you ever think about lashing out at others? How often?
  - 2. What do you think about? Describe your thoughts.
- H. Do you feel that you can trust people?
  - 1. Ever feel suspicious of people? How often?
  - 2. Feel that people are following you, talking about you, thinking about hurting you, out to get you? How often?
  - 3. Have you ever acted based on these thoughts?
- I. Do you have trouble sleeping
- J. Do you have nightmares?
- K. Do you experience flashbacks?
- L. What do you do when you have nightmares/flashbacks?

## **V. RECONSIDERATION**

### **OVERVIEW OF RECONSIDERATION STAGE**

If SSA denies an initial claim, the next step is to file a Request for Reconsideration. A Request for Reconsideration must be filed within 60 days of the date of the denial letter, plus five days for mailing, giving the claimant a total of 65 days to file. If the Request for Reconsideration is not filed within the 65 days allotted, Social Security will usually dismiss the claim unless good cause has been established for the late filing. Once a claim is dismissed, a claimant must start the process again with a new application, which causes delays and usually decreases the amount of retroactive benefits payable to the claimant if benefits are eventually granted.

At the reconsideration level, it is the advocate's job to make sure the paperwork for the initial Request for Reconsideration is completed accurately and submitted on time and to work with the decision maker at SSA to make sure the records are complete and that the file is processed without unnecessary delays.

You will use many of the same forms at the reconsideration stage as you did at the initial application stage. Be sure to include any additional evidence of the applicant's disability that you have gathered since the initial application.

Statistically, about 20% of the time a claimant wins at reconsideration. If your client was found not disabled, s/he will receive a letter of denial of benefits. You and your client then have sixty days to file for an Administrative Law Judge Hearing.

## VI. ADMINISTRATIVE LAW JUDGE HEARING<sup>72</sup>

If your client's claim is denied at reconsideration, s/he will receive a notice in the mail.

At this time, you should assist your client in determining whether s/he should appeal the denial and request a hearing before an Administrative Law Judge (ALJ).

The hearing request must be made 60 days from the date of notice. To request a hearing, you should fill out two forms:

1. *Request for Hearing by ALJ*
2. *Claimant's Statement When Request for Hearing is Filed and the issue is Disability*

Once the hearing request is made, the file is sent from the Local District Office to the Social Security Office of Hearings and Appeals. There the case will be assigned to an ALJ.

Your client will be notified of the time and place of the hearing at least 20 days before the hearing date.

The hearing date may not be set for 6-10 months, from the date of request. Sometimes, it takes over a year for the hearing to be scheduled.

Usually, the ALJ will be the first decision maker to see the claimant face to face.

The hearings are fairly informal. The only people likely to be there are the judge, a secretary operating a tape recorder, the claimant, the claimant's attorney, and anyone else the claimant has brought with him or her. In some cases, the ALJ has a medical doctor or vocational expert present to testify at the hearing. There is no jury nor are there any spectators at the hearing. There is no attorney at the hearing representing Social Security trying to get the judge to deny the disability claim.

Statistically, over half of the claimants who have a Social Security disability hearing win.

We recommend that you refer your client to an SSI Attorney, who specializes in this kind of work.

See pages 45-48 for a list of attorneys and agencies that might be able to help.

## VII. APPEALS COUNCIL<sup>73</sup>

If the Administrative Law Judge denies the case at the hearing level, the next and final step of the administrative process is to file a Request for Review with the Appeals Council. The Request for Review must be filed within 65 days of the date of the Hearing Decision. At the Appeals Council level, the attorney will write a brief setting forth the legal reasons why the Judge's decision was incorrect and should be overturned.

The Appeals Council is currently taking two years to make a decision. In the meantime, a claimant should generally file a new application with Social Security to attempt to get the benefits granted while the case is pending at the Appeals Council. Filing a new application will not affect the pending claim.

The Appeals Council can do one of three things when they make their decision:

1. They can decide that the Administrative Law Judge was wrong and grant benefits themselves. (This rarely happens); or,
2. They can send the case back to the Administrative Law Judge for another hearing; or,
3. They can deny the claim.



## **VIII. FEDERAL DISTRICT COURT<sup>74</sup>**

Once a claimant has gone through the whole administrative process with Social Security and has received a denial at the Appeals Council, the next step is judicial review by the federal district court. The claimant must file a complaint in the federal court within 65 days of the date of the Appeals Council denial. The claimant's attorney and the United States Attorney (representing Social Security) both file briefs, and the Judge makes his or her decision based on the briefs. The briefs contain a summary of all of the evidence and detailed legal arguments in which each side states its position. Occasionally, there will be an oral argument in federal court if the Judge finds it necessary.

The federal court will do one of three things when making its decision:

1. The court can grant the case outright;
2. It can remand the case to Social Security for another hearing; or,
3. It can deny the case.

If the district court denies the case, it can be appealed to the United States Court of Appeals, which will go through a process similar to that at the district court level.

## **IX. LOCATING YOUR LOCAL SSA OFFICE**

SSA offices are located in every county in California. To find out which one is closest to you, simply call Social Security's toll free number 1-800-772-1213. You can call for an appointment or to speak to a service representative between the hours of 7 a.m. and 7 p.m. on business days. The lines are busiest early in the week and early in the month so it is best to call at other times. Whenever you call, have your Social Security number handy.

If you are using a touch tone phone, recorded information and services are available 24 hours a day, including weekends and holidays.

People who are deaf or hard of hearing may call your toll-free TTY number, 1-800-325-0778, between 7 a.m. and 7 p.m. on business days.

If you do not have access to a phone, you can write to the SSA headquarters office and they will be able to direct you to the appropriate local office. The address for SSA headquarters is:

Social Security Administration  
Office of Public Inquiries  
Windsor Park Building  
6401 Security Blvd.  
Baltimore, Md. 21235

If you have access to the Internet, you definitely should check out the Social Security Administration website at <http://www.ssa.gov>. The site has a wealth of information, including several handbooks that you can download and print.

If you do not have access to the Internet, write the SSA office you are nearest to or the SSA headquarters and request the following handbooks:

- Social Security Disability Benefits (SSA Publication No. 05-10029)
- The Appeals Process (SSA Publication No 05-10041)
- Your Right to Representation (SSA Publication No. 05-10075)
- A Guide to SSI For Groups And Organizations SSA Publication No. 05-11015)
- SSI for Noncitizens (SSA Publication No. 05-11051)
- SSI In California (SSA Publication No. 05-11125)

## X. WHAT YOU'RE ELIGIBLE FOR IN SSI BENEFITS

<b>INDIVIDUALS</b>	<b>AGED</b>	<b>DISABLED</b>	<b>BLIND</b>
Independent Living	\$750.00	\$750.00	\$812.00
Non-Medical Board and Care	918.00	918.00	918.00
Independent Living, No Cooking Facilities	829.00	829.00	
Household of Another	574.00	574.00	650.00
<b>COUPLES AGED OR DISABLED</b>			
Independent Living		1332.00	
Non Medical Board and Care		1836.00	
Independent Living, No Cooking Facilities		1490.00	
Household of Another		1091.00	
<b>BLIND</b>			
Independent Living		1,544.00	
Household of Another		1,304.00	
<b>BLIND PERSON WITH AGED OR DISABLED SPOUSE</b>			
Independent Living		1,465.00	
Household of Another		1,223.00	

# **XI. SAMPLE LETTERS**

## **A. SAMPLE LETTER TO A TREATING DOCTOR**

Date

Doctor's Name  
Address

Re:  
SSN:

Dear Dr. L:

Hello, I am an advocate working with Mr. G on his claim for federal disability benefits. One of the most important aspects of his claim is documentation of Mr. G's disabilities. Enclosed is an authorized representative form. As his treating doctor, you are probably most familiar with Mr. G's mental health status.

It would be fantastic if you could fill out the enclosed mental status evaluation form. This is the same form used by the Social Security Administration. I have also enclosed some guidelines that can help you understand exactly what information they are looking for in assessing Mr. G's disability. It is important to comment specifically on his activities of daily living and how long his disability is expected to last.

Please return the form to me as soon as possible. If you have any questions, please do not hesitate to contact me at 555-5555. My address is 555 5<sup>th</sup> Street; my fax number is 333-3333. Thank you in advance for your help.

Sincerely,

Your name

## B. SAMPLE PERSUASIVE LETTER<sup>75</sup>

July 31st, 2002

Ms. Betty Waters  
Department of Social Services  
Disability and Adult Programs Division  
P.O. Box 24225  
Oakland, CA 94623

Re: Mr. Joe X application  
SSN: 123-45-6789

Dear Ms. Waters:

Mr. Joe X is a 55 year old male with multiple disabilities who is currently incarcerated at San Quentin. He will be released on September 30, 2002 and will be returning to the Oakland area. He was born in Kentucky but has lived in various places around the United States. He has apparently had two psychiatric hospitalizations a long time ago. He has some memory of work history at record stores and in radio stations, but does not know when he last worked or where. He believes it has been more than ten years since he was able to work.

Mr. X has had two extensive psychological evaluations by Deborah Grover, Ph.D., one of which is on file and the other is submitted with this letter. He has also had a mental status exam by Adrienne R. Fox, a psychiatrist. Mr. X has had a physical evaluation by Walter Q. Andrews, M.D. and a spine evaluation aided by CT scans and X-rays by Dr. Ira Black. The results of all three of their evaluations should be in Mr. X's file

Mr. X suffers from back and knee pain, acute paranoia, depression, anxiety and mild mental retardation, probably due to organic damage. He should be found disabled at the third step of the sequential evaluation pursuant to Listings of Impairments section 12.05 C. And 12.08

### I. REVIEW OF THE RECORD

#### a. Psychological Impairments

On her first examination, Dr. Grover, the consulting psychologist, diagnosed Mr. X as follows: Personality Disorder, NOS, with Hostile and Paranoid Features. She also found a Pain Disorder Associated with Both Psychological Factors and a General Medical Condition, Chronic (10/24/96 Evaluation, p.5) COGNISTAT results indicated severe to moderate impairments of Mr. X's short term memory skills (Ibid. P. 4)

On her second, even more extensive evaluation, Dr. Grover found further evidence of significant cognitive deficits: On the Weschler Adult Intelligence Scale-Revised (WAIS-R), Mr. X scored a 65 on his Performance IQ, showed significant deficits in his ability to organize

information, had extremely impaired scores on the Trail-Making Test, and evidenced marked and severe impairments in his memory skills across the board. (1/7/97 Eval, pp.2 and 3). The incomplete results of the MMPI-II showed strong evidence of paranoia. (14 of 16 questions endorsed in Persecutory Ideas. Ibid. P.3)

Dr. Fox also found a Cognitive Disorder NOS in his evaluation in addition to a Mental Disorder Due to multiple medical problems. (10/4/96 Eval, p. 4) Dr. Andrews write up of his physical exam of Mr. X is notable primarily for his assessment that Mr. X had significant psychiatric disorders. He found Mr .X had psychiatric disturbances of thought and mood, and would consider a diagnosis of major depression with paranoid features. (11/16/96 Eval., p. 7)

#### b. Physical Impairments

Mr. X has a history of back and knee pain. While Mr. X did not allow Dr. Andrews to perform a thorough physical exam, Dr. Andrews did note evidence of decreased range of motion flexion in the neck. (11/16/96 Eval., p.6)

Dr. Ira Black was able to obtain both a CT scan and x-rays of Mr. X back. He found a herniated disc at L4-5 with arthritic changes and neurological deficits. (12/17/96 Eval., p.1) Dr. Black found that Mr. X's inability to sit, bend or work was consistent with our medical findings. And that such limitations would be expected given Mr. X's diagnosis. (Ibid. P. 2).

Mr. X has also attempted to get evaluations of his knees. Due to a lack of insurance and his refusal to be seen at San Francisco General Hospital or by a medical examiner chosen by DAPD, we were unable to get an evaluation. Mr. X's paranoia and personality disorder also prevented him from cooperating with a pulmonary test scheduled through DAPD, though he did show up for the appointment. He has had recent treatment for pneumonia in the emergency room at St. Mary Hospital. (Record should be in his file)

## II. DETERMINATION OF DISABILITY

Mr. X should be found disabled based on Listings of Impairments section 12.05 C. On Mental Retardation. Section 12.05 C requires a valid verbal, performance or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant work-related limitations of function.

In Mr. X's case, in addition to his Performance IQ score of 65, he has both a physical and mental impairment, which imposes additional and significant work-related limitations. The additional mental impairment is, in fact, so sever as to qualify him independently at the Listing level under Listings of Impairments section 12.08.

Dr. Grover administered the WAIS-R and accepts Mr. X's scores as valid. Mr X's Performance IQ score of 65 is consistent with Dr. Grover's finding that he is completely unable to organize the information from the world around him. Mr. X's IQ scores in the Vocabulary and Information subjects were average and above-average, which Dr. Grover accepts as evidence that Mr. X's level of functioning was at least average and would explain why Mr. X is able to appear

intelligent and is often able to adequately express himself verbally (1/7/97 Eval. P. 3)

Mr. X's physical impairments impose additional and significant work-related limitations of function. He suffers from significant back pain due to a herniated disk and arthritic changes. This prevents Mr. X from being able to sit, being able to walk more than a few blocks and being able to work. He uses a cane and always stands for his interviews. (See evaluations of Dr. Fox, at p.2, Dr .Andrews at p. 6; Dr. Grover p. 2 and 6)

Mr. X also has a mental impairment that imposes additional and significant work-related limitations. His personality disorder is, in fact, so severe that it qualifies as another Listings level impairment under section 12.08. A Listings level impairment is met under section 12.08 when a requirement in both 12.08(a) and 12.08 (b) are met.

Mr. X easily meets Listings (A) 2. And (B) 1 and 2. He has pathologically inappropriate suspiciousness and hostility. Virtually every medical professional (and social service provider) who has come in contact with Mr. X has noted his extreme suspiciousness and paranoia. He was so suspicious and hostile to Dr. Andrews that in the initial examination he was unwilling to have Dr. Andrews touch him or undergo any physical examination. (11/15/96 Eval., p. 2) On the second appointment, he refused to undress and would only allow the doctor to measure the girth of his calves. (Ibid. P. 6). Dr. Andrews found the patient was hostile and paranoid. He displayed evidence of paranoid thought processes and impoverished thought content. (Ibid. P. 6)

Dr. Grover found Mr. X extreme suspiciousness and hostility his most striking psychological trait. In her initial meeting with him, he refused to remove an oversized poncho that covered him, and would not remove his dark glasses. She reported, the most striking presentation regarding this client was his pervasive paranoid and hostile stance with the examiner from the minute he entered the room. (10/24/96 Eval, p. 2). In the family and social history, Mr. X refused to answer in any detail and stated that any of the other questions regarding family and social history were of a personal nature and of no use to this examiner in the evaluation. (Ibid. P. 3)

Even in the second and third meetings with Dr. Grover, in which Dr. Grover noted Mr. X to be cooperative, Mr X evidenced agitation, frustration and irritation at what was being asked of him on a regular basis. The client did evidence multiple instances of extreme paranoid ideation and persecutory delusions which guided much of his behavior. (1/7/97 Eval., p.2).

In order to meet Listing 12.08, the pathologically inappropriate suspiciousness or hostility must also result in at least two of the listings under 12.08 (B). Mr X >s paranoia has resulted in both B. 1. Marked restriction in activities of daily living, and B.2 Marked difficulties in maintaining social functioning, as well as B. 3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner.

Mr. X's restrictions in activities of daily living have been noted throughout the record. He is unable to shop, cook, or clean for himself. (Daily Activities Questionnaire, Dr. Fox's report, p. 3, Dr. Andrews report, p.4) He has been dependant on the social welfare system for shelter and

food. (10/24/96 Eval. P. 6)

Mr. X pathological suspiciousness and hostility has its greatest consequences in his difficulty in maintaining social functioning. Mr. X has no reported contact with friends or family. (10/24/96 Eval., p. 3, 11/15/96 Eval. P. 4,) and, in fact stays away from other people on the street and in shelters. (Dr. Fox Eval. P.3) He has the ability to anger, alienate or irritate virtually everyone with whom he comes in contact. Dr. Groer reported in her first exam, he had alienated and/or irritated most of the staff of the Triage Unit by the time he had completed our intake exam (10/24/96 Eval., p. 6) This attorney can also report that Mr. X has angered and alienated most of the staff in the office. (One should also note that both offices, the Triage Unit and the Homeless Advocacy Project, have great experience and tolerance in working with mental disabilities and personality disorders. That Mr. X stands out is testament to the severity of his personality disorder.)

Mr. X's personality disorder, perhaps accompanied by organic damage, also have resulted in significant deficiencies in concentration and memory. Dr. Grover's administration of the Weschler Memory Scale-Revised showed marked and sever impairments on his memory skills across the board. The Attention/Concentration score left him in the less than .05 percentile. These test scores are supported by this attorney's own experience with Mr. X Mr. X needed all appointments written down for him, and even then he was frequently confused about meeting times, as he would lose the pieces of pater.

### III. CONCLUSION

Mr. X should be found disabled at the third step of the sequential evaluation process pursuant to Listings of Impairments section 12.05 C and section 12.08. He has multiple disabilities, both physical and mental, and is incapable of maintaining any form of substantial, gainful employment.

Thank you both for your attention to this case, and for your patience in waiting for the available medical reports. If I can be of any further assistance, please do not hesitate to contact me, (555) 555-5555

Sincerely,

Joe Doe  
Legal Advocate



## **XII. SSI/SSDI ATTORNEYS/AGENCIES**

Below you will find attorneys and agencies who do SSI/SSDI advocacy. These parties may or may not be able to assist individual claimants. Often, they will only be able to provide you with general advice or referrals. This list is for informational purposes only - it is not an endorsement of any attorney or agency. Please note that this list is not exhaustive.

### **IN CALIFORNIA**

#### ***Alameda County***

Bay Area Legal Aid  
405 14th Street 11th floor  
Oakland, California 94612  
1-800-551-5554  
<http://www.baylegal.org>

Homeless Action Center  
2500 Martin Luther King Jr. Way  
Berkeley, California 94704  
(510) 540-0878  
<http://www.homelessactioncenter.org>

#### ***Contra Costa County***

Bay Area Legal Aid  
1017 Macdonald Avenue  
Richmond, California 94801  
1-800-551-5554  
<http://www.baylegal.org>

The Hawkins Center  
101 Broadway  
Richmond, California 94804  
(510) 232-6611  
<http://www.hawkinscenter.org>

#### ***El Dorado County***

Volunteer Legal Service Program of  
Northern California  
517 12th Street  
Sacramento, California 95814  
***Marin County***

(916) 551-2133

#### ***Fresno County***

Central California Legal Services  
2014 Tulare, Suite 600  
Fresno, California 93721  
(559) 570-1200  
<http://www.centralcallegal.org>

#### ***Kings County***

Central California Legal Services  
208 West Main Street, Suite U-1  
Visalia, California 93291  
1-800-350-654  
1-800-417-3296  
<http://www.centralcallegal.org>

#### ***Lassen County***

Senior Advocacy Center  
1647 Hartnell Avenue Suite 6  
Redding, CA -96002-2268  
(530) 223-0999  
<http://www.shastanet.org/slc/sls.html>

#### ***Los Angeles County***

Bet Tzedek Legal Services  
145 S. Fairfax Avenue Suite 200  
Los Angeles, California 90036  
(323) 939-0506  
<http://www.bettzedek.org>  
Bay Area Legal Aid  
4340 Redwood Highway Suite A-5

San Rafael, California 94903  
1-800-551-5554  
<http://www.baylegal.org>

Law Offices of Peter Young  
271 Miller Avenue  
Mill Valley, California 94941  
(425) 388-2400

***Mariposa County***

Central California Legal Services  
357 West Main Street, Suite 201  
Merced, California 95340  
(209) 723-5466  
<http://www.centralcallegal.org>

***Merced County***

Central California Legal Services  
357 West Main Street, Suite 201  
Merced, California 95340  
(209) 723-5466  
<http://www.centralcallegal.org>

***Modoc County***

Senior Advocacy Center  
1647 Hartnell Avenue Suite 6  
Redding, CA -96002-2268  
(530) 223-0999  
<http://www.shastanet.org/slc/sls.html>

***Placer County***

Volunteer Legal Service Program of  
Northern California  
517 12th Street  
Sacramento, California 95814  
(916) 551-2133  
<http://www.sacbar.org/vlpshomepage.html>

Benefits Rights Project  
225 Bush Street, Suite 757  
San Francisco, California 94101

***Riverside County***

Law Offices Of David Shore  
1310 Union Plaza Court  
Oceanside, California 92054  
(760) 966-9180

***Sacramento County***

Law Offices of Olson, Hagel, Waters and  
Fishburn  
555 Capitol Mall Suite 1425  
Sacramento, California 95814  
(916) 442-2952

Volunteer Legal Service Program of  
Northern California  
517 12th Street  
Sacramento, California 95814  
(916) 551-2133  
<http://www.sacbar.org/vlsphomepage.html>

***San Diego County***

Law Offices Of David Shore  
1310 Union Plaza Court  
Oceanside, California 92054  
(760) 966-9180

Law Offices of John Byran Martin  
4025 Camino Del Rio South Suite 300  
San Diego California 92108  
1-800-568-4529

***San Francisco County***

Bay Area Legal Aid  
50 Fell Street  
San Francisco California 94102  
1-800-551-5554  
<http://www.baylegal.org>

(415) 397-7262

General Assistance Advocacy Project

276 Golden Gate Avenue  
San Francisco, California 94102  
(415) 928-8191  
<http://www.gaap.org>

Law Offices of Peter Young  
271 Miller Avenue  
Mill Valley, California 94941  
(425) 388-2400

Legal Services for Prisoners With Children  
1540 Market Street #490  
San Francisco, California 94102  
<http://www.prisonerswithchildren.org>

### ***San Mateo County***

Bay Area Legal Aid  
2287 El Camino Real  
San Mateo California 94403  
1-800-551-5554  
<http://www.baylegal.org>

### ***Santa Clara County***

Bay Area Legal Aid  
2 West Santa Clara Street 8th Floor  
San Jose, California 95113  
1-800-551-5554  
<http://www.baylegal.org>

Mental Health Advocacy Project  
111 W. St. John Street, Suite 315  
San Jose, California 95113  
(408) 294-9730

### ***Shasta County***

Senior Advocacy Center  
1647 Hartnell Avenue Suite 6  
***Trinity County***

Senior Advocacy Center  
1647 Hartnell Avenue Suite 6

Redding, CA -96002-2268  
(530) 223-0999  
<http://www.shastanet.org/slc/sls.html>

### ***Siskiyou County***

Senior Advocacy Center  
1647 Hartnell Avenue Suite 6  
Redding, CA -96002-2268  
(530) 223-0999  
<http://www.shastanet.org/slc/sls.html>

### ***Solano County***

Legal Services of Northern California  
Solano County Offices  
1810 Capital Street  
Vallejo, California 94590  
(707) 643-0054  
<http://www.sacbar.org/vlsphomepage.html>

### ***Sonoma County***

Law Office of Peter Young  
271 Miller Avenue  
Mill Valley, California 94941  
(425) 388-2400

Sonoma County Legal Aid  
37 Old Courthouse Square Suite 100  
Santa Rosa, California 95404  
(707) 542-1290

### ***Toulumne County***

Central California Legal Services  
357 West Main Street, Suite 201  
Merced, California 95340  
(209) 723-5466  
<http://www.centralcallegal.org>

Redding, CA -96002-2268  
(530) 223-0999  
<http://www.shastanet.org/slc/sls.html>

### ***Visalia County***

Central California Legal Services  
208 West Main Street, Suite U-1  
Visalia, California 93291  
1-800-350-3654  
1-800-417-3296  
<http://www.centralcallegal.org>

### ***Yolo County***

Volunteer Legal Service Program of  
Northern California  
517 12th Street  
Sacramento, California 95814  
(916) 551-2133  
<http://www.sacbar.org/vlsphomepage.html>

## **NATIONAL ORGANIZATIONS**

Bazelon Center for Mental Health Law  
1101 15th Street, N.W. Suite 1212  
Washington, D.C. 20005  
(202) 467-5730  
<http://www.bazelon.org>

National Organization for Social Security  
Claimant's Representatives  
6 Prospect Street  
Midland, N.J. 07432  
1-800-431-2804  
<http://www.nosscr.org>

## ENDNOTES

1. Bazelon Center for Mental Health Law, *Finding the Key: An Explanation of Federal Medicaid and Disability Program Rules*. Available online at <http://www.bazelon.org/findingthekey.html>
2. SSA Pub. No. 05-11125,, *SSI In California*, (May 2002) Available online at <http://www.ssa.gov/pubs11125.html>
3. *Id.*
4. SSA Pub. No., 64-039, *Disability Evaluation Under Social Security*, (January 2001)
5. Charles T. Hall, Esq., *Disability Benefits: Frequently Asked Questions*, National Organization for Social Security Claimant's Representatives. Available online at <http://www.nosscr.org/hallfaq.html>
6. *Id.*
7. See Note 5 See also SSA Pub No 64-039, *Disability Evaluation Under Social Security*, (January 2001)
8. *Id.*
9. *Id.*
10. *Id.*
11. See Note 5. See also SSA Pub. No. 05-10041, *The Appeals Process* (April, 1999) p.1
12. See Note 5.
13. See Note 5.
14. See Note 5
15. See Note 5
16. *Id.*
17. *Id.*
18. SSA Pub. No 64-309, *Disability Evaluation Under Social Security*, (January 2001) p. 2
19. *Id.*

20. See Note 5. See also SSA Pub. No. 05-11041, *The Appeals Process* (April, 1999) p. 1-2
21. *Id.*
22. See Note 5.
23. See Note 5.
24. See Note 5.
25. See Note 5. See also SSA Pub. No. 05-11015, *A Guide to SSI For Groups And Organizations*, (June 2002) p. 20-22
26. See Note 5
27. See Note 5
28. See Note 5. See also SSA Pub. No. 05-11000, *Supplemental Security Income*, (March, 2001)
29. *Id.*
30. See Note 5. See also SSA Pub. No. 05-10084, *Survivors Benefits*, (March, 2001), available online at <http://www.ssa.gov/pubs/10084.html>
31. See Note 5.
32. See Note 5
33. See Note 5
34. See Note 5
35. See Note 5
36. See Note 5
37. See Note 5
38. SSA Pub. No. 05-11000, *Supplemental Security Income*, (March, 2001)
39. See Note 5. See also SSA Pub. No. 05-11015, *A Guide To SSI For Groups and Organizations*, (February 2001) p. 10-12
40. See Note 5. See also SSA Pub. No. 05-11015, *A Guide to SSI For Groups And Organizations*, (June 2002) p. 4

41. *Id.*

42. SSA Pub. No. 05-11051, *Supplemental Security Income for Noncitizens*, (June, 2002) p. 1-3. Available online at <http://www.ssa.gov/pubs/11051.html>

43. *Id.*

44. *Id.*

44. SSA Pub. No. 05-11125, *SSI In California*, (May, 2002) Available online at <http://www.ssa.gov/pubs11125.html>

46. 20 C.F.R. 416.1321(b)

47. 20 C.F.R. 416.221

48. 20 C.F.R. 416.421

49. 20 C.F.R. 416.1335

50. 42 U.S.C. 402(x)(1)(A)(i) as amended by Public Law 106-170

51. 42 U.S.C. 402(x)(1)(A)(ii) as amended by Public Law 106-170

52. The old rules will continue to apply to individuals whose jail or prison confinement began before April 1, 2000. Although it is not described here, the Bazelon Center has a memorandum that lays out those rules. If you would like a copy, send a request with a stamped self addressed envelope to: Bazelon Center Publications Desk, 1101 15th Street N.W. Suite 212, Washington D.C. 20005

53. 20 C.F.R. 404.468(a)

54. 20 C.F.R. 416.211

55. 42 U.S.C. 1382 (e)(1)(I) as amended by Public Law 104-93; 42 U.S.C. 402(x) as amended by Public Law 106-170

56. 42 U.S.C. 1383(m)

57. 42 U.S.C. 1396(d)(a)(27(A))

58. Social Security Act Section 1905(a)(A)

59. 42 C.F.R. 435.916

60. 42 C.F.R. 435.1009(b)

61. 42 C.F.R. 435.916
62. Letter from HHS Secretary Donna Shalala to Congressman Charles Rangel, April 6, 2000
63. Letter from Sue Kelley, Associate Regional Administration, Division of Medicaid and State Operations, HCFA Region II, to New York Medicaid Director, September 14, 2000.
64. The description of the “Overview of the Initial Application” was originally published on the website of the Bay Area Homeless Alliance, available at <http://www.baha.org/ssi/init.shtml> For more information, see SSA Pub. No. 05-11000, *Supplemental Security*, (March 2001)
65. *Id.*
66. “What is Useful” was originally published by the Hawkins Center of Law and Services for the Disabled, *Tips for a Letter from a Family or Friends Supporting a Claim of Disability*, available online at <http://www.hawkinscenter.org/publications/tips.htm>
67. *Id.*
68. SSA Publication No. 64-039, *Disability Evaluation Under Social Security* (January 2001) p.19-20
69. *Id.*
70. See Note 59.
71. See Note 59.
72. See Note 59.
73. The description of the “Appeals Council” was taken from the website of the law firm Olson, Hagel, Waters, and Fishburn. It can be found at [http://www.olsonhagel.com/ss\\_process.html#appeals](http://www.olsonhagel.com/ss_process.html#appeals)
74. *Id.*
75. The sample persuasive letter was originally found on the website of the Bay Area Homeless Alliance, located at <http://www.baha.org/ssi/docs/30perlet.txt>