

Your Claim Was Denied. To Appeal or Not to Appeal:

This is an excellent question. If you received a denial decision because you don't meet the non-medical guidelines, such as you don't have enough work quarters to be covered in a Social Security Disability Insurance Benefits claim or your income and resources are too high to qualify for Supplemental Security Income (SSI), you may not have much recourse to appeal the decision unless you have reason to believe the information the Social Security Administration (SSA) had was incorrect. However, if your claim was denied because SSA determined your condition(s) were not severe enough to meet their definition of disability, you will want to appeal the decision. A large percentage of claims are denied at the initial and reconsideration appeal level, so you haven't really given yourself a fighting chance unless you appeal it. A much higher percentage of cases are approved at the hearing level, which includes appearing before an administrative law judge (ALJ) and providing your description of your conditions, your symptoms, and how they affect your day-to-day life. (During Covid19 pandemic, these hearings are not in-person, but can be held by telephone conference or video conference, for the safety of the claimant and hearing staff).

If the ALJ denies the claim, the next level of appeal is the Appeals Council and thereafter, Federal District Court. It is important to understand that the standard for review is whether the ALJ's decision was in error as a matter of law, if the ALJ abused his or her discretion, whether the decision was not supported by substantial evidence, or there is a broad policy or procedural issue that may affect the public interest.

Similarly, the Federal District Court is not tasked with reviewing additional medical records or evidence, as they are not a fact finder. Instead, the Court looks to see whether the ALJ failed to follow the law in coming to its decision or the ALJ failed to base the decision on substantial evidence in the record. For these reasons, the likely remedy is a remand of the case back to an ALJ for additional proceedings. The odds of a favorable decision at the Federal District Court level is quite small, with success rates at less than 30% (and with the vast majority of successful appeals involving a return of the claim (or what is called a remand) for an additional hearing before what may be the very same ALJ that initially denied the claim.

In order to bring a Federal District Court action, one must pay both filing and service costs unless the court determines that there is a basis for a waiving of such costs based on an individual claimant's inability to afford such costs. In order to proceed in such a fashion, it's necessary that the court approve a motion to proceed "in forma pauperis." Because of the extensive work involved in handling a Federal District Court action, this can run into significant expense. Not all Social Security disability claims can be said to justify the time and expense involved with proceeding to Federal District Court, but at that level, an attorney with experience in Social Security Disability claims can help you regarding the best course of action for you.

It should be mentioned that chances of winning a disability claim increase significantly if you have an experienced representative/attorney to assist you. This individual can

present his or her theory on the case with documented evidence to support it and can discuss with you the best option for you regarding appealing versus refile. Although it is your choice, typically, the earlier you obtain this type of assistance, the better.

One may elect to refile a claim after being denied at a higher level or because you missed an appeal deadline, provided *if* it is a Disability Insurance Benefits claim (not SSI), the disabled individual still has coverage (referred to as a “Date Last Insured”). In refiling a new claim, the last denial decision becomes final and restricts the retroactive payment (back pay) one can receive, but there is the hope of adding additional treating records and getting a “fresh set of eyes” to review the claim. If you refile within 12 months of the prior denial, a Social Security disability representative/attorney can also review your file and discuss if reopening of a prior denial decision to pursue additional back pay is a possibility for you.

Pursuing Social Security disability benefits can take persistence, but if you aren’t able to work due to your disability or disabilities and have been unsuccessful on your own or feel overwhelmed by the process, don’t hesitate to ask for help.