

# cutting through the red tape



Top Ten Things  
All Florida Social  
Security Disability  
Applicants  
Should Know

---

**MICHAEL P. SULLIVAN, ESQ.**

**cutting  
through  
the  
red tape**

**MICHAEL P. SULLIVAN, ESQ.**

Copyright © 2009 by Michael P. Sullivan  
All rights reserved. No part of this book may be used or  
reproduced in any manner whatsoever without written  
permission by the author.

Printed in the United States of America.

ISBN: 978-1-59571-488-6

*Designed and published by*

Word Association Publishers  
205 Fifth Avenue  
Tarentum, Pennsylvania 15084

[www.wordassociation.com](http://www.wordassociation.com)

1 800 827 7903

# cutting through the red tape

TOP TEN THINGS  
ALL FLORIDA SOCIAL  
SECURITY DISABILITY  
APPLICANTS  
SHOULD KNOW

**MICHAEL P. SULLIVAN, ESQ.**



FOR MY PARENTS, MIKE AND MARCIA,  
FOR THEIR UNFAILING ENCOURAGEMENT,  
CONFIDENCE AND SUPPORT.





# TABLE OF CONTENTS

## CHAPTER ONE

### ALWAYS MAINTAIN YOUR CREDIBILITY

5

## CHAPTER TWO

### DON'T GIVE UP

7

## CHAPTER THREE

### KNOW THE RULES I: ELIGIBILITY REQUIREMENTS

9

## CHAPTER FOUR

### CHOOSE YOUR CORRECT METHOD OF APPLYING

11

## CHAPTER FIVE

### GET YOUR DUCKS IN A ROW: THE DOCUMENTATION AND INFORMATION YOU WILL NEED

13



CHAPTER SIX  
STATE YOUR CLAIM:  
THE DISABILITY REPORT

15

CHAPTER SEVEN  
KNOW THE RULES II: WHAT  
“DISABLED” MEANS

19

CHAPTER EIGHT  
LAWYER UP: WHEN, WHY AND  
HOW TO CHOOSE A SOCIAL  
SECURITY ATTORNEY

29

CHAPTER NINE  
BE A GOOD PATIENT

39

CHAPTER TEN  
KEEP A JOURNAL

43

SULLIVAN & HEPLER  
1644 BLANDING BLVD.  
JACKSONVILLE, FLORIDA  
32210

904 384 8808

[www.sullivanandhepler.com](http://www.sullivanandhepler.com)



## INTRODUCTION

Thank you for your interest in my book. I hope you find it valuable as an introduction to the Social Security disability claims process. But it is just that—a very basic overview coupled with general suggestions. Please do NOT consider anything in this book to be legal advice unless you have agreed to hire my firm and we have agreed to accept your case.

My firm, Sullivan & Hepler, practices in the areas of Social Security disability, workers' compensation, VA compensation, and criminal defense. We are located at 1644 Blanding Boulevard, Jacksonville Florida 32210. Our web address is *www.sullivanandhepler.com*. If you go to our site, you can find a lot more information about Social Security disability and our other practice areas. If you or someone you know would like a copy of this book or any of our other publications, they can be ordered on our website or by calling us at (904)384-8808. To order by mail, I have included a postcard on the last page. Lastly, if you or anyone you know has a Social Security question, or any legal matter they'd like to discuss, please don't hesitate to call. The number again is (904) 384-8808.

Michael P. Sullivan



INTRODUCTION  
TO CHAPTERS ONE AND TWO

If you are like most of my clients, you have worked your whole life. A part of every dollar you have ever earned was taken by the United States Government with a promise. That promise was that you would receive money benefits when you became too old or too disabled to work. Now your worst nightmare has come true: through no fault of your own, injury, illness, or disease has left you unable to work. So you naturally look into applying for the Social Security benefits that you have earned. You are shocked to learn that working your way through the disability system involves miles of red tape and could take two years or longer! After the shock wears off, anger sets in. Why is the process so complicated and confusing? The government took taxes out of every paycheck you ever earned, and now it seems almost impossible to make the government deliver on its promise to pay you the benefits you deserve!

Your frustration is perfectly natural. You should turn it into the energy you need to see the Social Security disability claims process through to the end. Don't let yourself fall into one of the two biggest traps that kill Social Security disability claims at the start. These are ruined credibility and giving up on the claim.



CHAPTER ONE  
CREDIBILITY IS EVERYTHING

Do not try to short-circuit the process by exaggerating your symptoms. I know you feel like the claims process is unfair, but if you are not 100% honest, you risk damaging your claim. YOUR CREDIBILITY IS THE SINGLE MOST IMPORTANT FACTOR IN WINNING YOUR CASE. As you read this book, you will learn a lot about the technical aspects of the Social Security Administration's disability claims process. But when it's all said and done, most of the time sincerity is what wins the case.

A successful claim has two parts. The first part is the medical evidence of your injury, illness, or condition. The second part is credible testimony of your severe symptoms. Simply having a particular ailment says nothing about your ability to work. It's the effects of the ailment that limit your work abilities. The medical label or diagnosis alone is not enough because two people with the exact same medical problem might feel completely differently. You might have excruciating pain that prevents you from being able to work, while the person sitting next to you at the doctor's office with the same disease could feel a little under the weather, but not bad enough even to call in sick! Doctors and researchers know this is true, but they haven't yet figured out why. So the only way the folks at Social Security can really tell whether your condition makes it impossible for you to work is by asking you about your symptoms, and this is why it's so important for you to be truth-

ful at all times. It's like the old story of the boy who cried wolf: if they find out that anything you said wasn't true, or if they think that you exaggerated something, then they won't believe anything else you say.

Damaging your credibility is especially bad for your case when you have an excellent work record. If the judge can see that you have a steady, stable job history and that you suddenly quit working, that sends a strong message. I call it the "workers work" rule. You don't work day in and day out for years and then stop for no good reason, and judges know that. A solid job history is a great advantage in your case. But if you damage your credibility by exaggerating your condition, you could lose that advantage.

## CHAPTER TWO DON'T GIVE UP

I'm continually amazed by how many people call to tell me that they stopped working years ago, applied for disability benefits, received a denial letter, and then just gave up without calling a Social Security attorney to help them. Many of those people had worthwhile claims that they could have won, but now they have to start the process all over. I've discovered that people give up because they're so overwhelmed by their health and financial problems that trying to untangle all the red tape of the Social Security disability process is just too much. This is unfortunate, and it is in part what led me to write this book. Don't be one of those people who give up! Make the government follow through on its promise to you. Pick up the phone and get help now. **ALL DENIALS MUST BE APPEALED WITHIN 60 DAYS**, so don't waste time. Take action immediately after you get a denial letter.

On the other hand, I also talk to a lot of people who drop their claims because they hope to get better so that they can go back to work. I applaud this attitude and encourage all of my clients to think this way. But don't let your optimism stop you from pursuing your claim. Even if you do get better, you could still get disability benefits for the period of time you were not able to work as long as it lasted at least a year. This is called a Closed Period Claim. For my clients who have been in this situation, the back benefits that they received were a huge boost in rebuilding their lives.



## CHAPTER THREE

### KNOW THE RULES: ELIGIBILITY REQUIREMENTS

Before Social Security even looks at your medical problems, it has to determine whether you qualify for disability benefits based on your work history. To be eligible for disability benefits, you must have paid Social Security taxes over a certain period of time. (This is the money that was deducted from your paycheck automatically.) This can be a complicated and technical issue, but this is a good rule of thumb: if you are older than 31, you will qualify for disability benefits if you have worked and paid Social Security taxes for at least five of the last ten years before you became disabled.

It is sometimes possible to qualify for disability benefits based on a relative's earning record. For instance, a widow(er) may be able to qualify for disability benefits on a deceased spouse's earnings record. Adult disabled children of deceased workers may be able to qualify based on their parents' earnings records. An experienced Social Security attorney can help you figure out whether you would qualify based on your particular situation.

Even if you don't qualify for disability benefits, you might qualify for SSI (Supplemental Security Income). The proof of disability is the same for both programs, but SSI has strict limits on assets and household income.



## CHAPTER FOUR

### CHOOSE **YOUR** BEST METHOD FOR APPLYING

Obtaining the Social Security disability benefits that you paid for can seem like an uphill battle. But don't be overwhelmed by the application process. If you get your ducks in a row and complete the required tasks in small steps, the whole process will be a lot easier than you think!

To apply for benefits, you have three options. You may apply online, in person at your local Social Security office, or by telephone.

#### *Online Application*

You can now file your disability claim online at [www.socialsecurity.gov/applyfordisability/](http://www.socialsecurity.gov/applyfordisability/). You will be assigned a PIN (personal identification number) that will enable you to track the status of your claim. You should not apply online unless you are very comfortable with computers! I have had a lot of people come to my office thinking that they had applied, but they had not completed the whole online process. That's why, if you do apply this way, I recommend confirming that your application was received by calling Social Security at **1-800-772-1213**.

#### *In Person Application*

To apply for disability benefits in person, call **1-800-772-1213** and make an appointment to go to your local office. I prefer this method of applying because it allows you the opportu-

nity to make personal contact with a real human being who will look at you and listen to your story. The claims representative who takes your application is trained not only to write down what you say but also to observe and make notes about how you look, how you feel, how you act, etc. If you have trouble walking, if you can't sit for too long, if you use a cane, or if you're in obvious pain, the claims representative will write that down. The judge will consider those observations along with the other evidence in your file when a decision is made.

The problem with this method is that it may be hard for you to get to the Social Security office. If you can't make it, you still have two other options available for applying.

### *Telephone Application*

To apply for benefits by phone, call **1-800-772-1213** and set up an appointment for a telephone interview. A claims representative will call you at a pre-arranged date and time. Do not miss this appointment! This interview process is similar to the in-person process. You still get to talk to a real human being (not a machine!), but you can do it from the comfort of your own home.

CHAPTER FIVE  
GET YOUR DUCKS IN A ROW:  
THE DOCUMENTATION AND INFORMATION  
YOU WILL NEED

Regardless of which method you choose to apply, you will need to supply a lot of paperwork and information. It is best to start gathering this information as soon as possible. You will need the following things:

- Social Security number.
- An original or certified copy of your birth certificate. If you were not born in the U.S., proof of citizenship or legal residence.
- If you served in the military, an original or certified copy of your discharge papers (Form DD214).
- Your W2 from last year, or your tax return if you were self-employed.
- If your impairment was caused by a work accident, workers' compensation information including date of injury, claim number, and proof of payment amounts (you can get a copy of the payout ledger from the insurance company).
- Social Security number for your spouse and minor or disabled adult children.
- Dates of prior marriages.
- Dates of divorces or dates of death of former spouses.

- Names and addresses of all doctors, hospitals, clinics, or other medical facilities where you have been a patient since you became disabled, along with the dates you were a patient.
- All relevant medical records already in your possession.
- Names of all prescription medicines you take, along with dosage, name of prescribing doctor, and condition for which the medicines were prescribed.
- Checking or savings account information.
- Name, address and phone number of a contact person if you cannot be reached.
- For all jobs you held in the 15 years before you became disabled:
  - Job title
  - Type of business you worked in
  - Dates worked
  - Hours per day
  - Number of days per week
  - Rate of pay
  - Job duties

You should have as much of the above information as possible before you apply. However, don't delay applying just because you're missing something. Social Security will help you obtain any information you need.

## CHAPTER SIX

### STATE YOUR CLAIM (THE DISABILITY REPORT)

The “Disability Report” comes next. It will probably take you longer than the 30 minutes estimated by Social Security to fill out this paperwork, but it will be easier if you work on small sections at a time.

**SECTION 1** asks you to provide personal information.

**SECTION 2** asks about your illnesses, injuries and/or conditions and how they affect you. Question A asks you to list each one that has an effect on your capabilities. List everything—I often see people who don’t list impairments that they had prior to stopping work because they didn’t think they were important. They mistakenly think that because they were still working when the impairments developed, those impairments are not causing the disability. But those impairments **do** need to be listed, and here’s why. First, those pre-disability impairments may limit the types of jobs that may be considered by a vocational expert at step 5 of the sequential evaluation process (see **CHAPTER SEVEN**). Second, the pre-disability impairments may be aggravated by the post-disability impairments in ways that may not be foreseeable at the beginning of your claim. For example, devastating medical complications can arise when well-controlled diabetes becomes uncontrolled due to lack of exercise caused by a back injury.

**SECTION 3** asks you about your work history. Question A asks you to list all the jobs you had in the 15 years before you became unable to work. Question B asks particulars

about the job you did the longest. Question C asks what you did all day in this job. When answering this question, be as specific as possible. Try to put each task into layman's terms. Be specific about how much the things you lifted weighed, and in what position you did each task (e.g., standing, bending over, kneeling, reaching, etc.). Also note what production standards were required such as quotas.

**SECTION 4** asks for information about your medical providers. You want to make it as easy as possible for Social Security to obtain your medical records. List as much information as you can to help them identify your providers. Give them information like the specialty of the doctor you saw, the fax number, the name of the office manager, or anything else that you think will help them get all of your records easily.

**SECTION 5** asks about your medications. The easiest way to fill out this section is to copy the names and dosages of your medicines from the bottles, or you can get a printout from your pharmacy. You will also need to state the reason you take the medicines and any side effects the medicines have (e.g., drowsiness or nausea).

**SECTION 6** asks about diagnostic tests you have undergone. This means things like MRIs, CT scans, x-rays, and nerve conduction studies. It's hard to remember all of this information, but the test results should be in your doctors' records if you forget something.

**SECTION 7** is straightforward and asks about your educational background.

**SECTION 8** asks about vocational rehabilitation information.

**SECTION 9** is the remarks section, where you can finish answers if you ran out of space on the form. You can also add any information you feel is important to your claim.



## CHAPTER SEVEN

### KNOW THE RULES II: WHAT “DISABLED” MEANS

Your definition of disability may not be the same as the legal definition that Social Security uses. Social Security’s definition is more complicated than you would think, so I’ve boiled it down to the basics.

To be disabled under Social Security’s rules, you have to show that you can’t do any kind of full-time paid work because of a physical or mental impairment that is expected to last at least a year or cause your death. This means that you can’t do your past work and that, taking into consideration your age, education and work experience, you can’t do any other kind of work that exists anywhere in the country, regardless of whether that work is available in your area, whether there’s a specific job opening, or whether you would be hired if you applied.

To figure out whether you meet this definition, the judge has to analyze the facts of your case according to what’s called “the five-step sequential evaluation process.” I’ll explain the basics of each of the five steps below. But first, I’ll explain an additional hurdle, the duration requirement.

#### *Duration Requirement*

The duration requirement means that your medical condition(s) must have lasted or be expected to last at least a year. You are not allowed to tack together two unrelated conditions to meet the twelve-month requirement. For example, assume

a person got cancer but recovered in eight months. The day before they were due to go back to work, they got into a car accident that put them out of work again for another five months. This person would not be entitled to disability benefits because neither the cancer nor the injuries from the car accident put them out of work for a year. They would not be able to add the eight months to the five months to claim disability benefits.

If you receive a “durational denial” in response to your initial application, you should swing into action immediately. You or your lawyer should ask your doctor for a letter stating that your condition is expected to last at least a year and explaining why.

### *Step 1: Substantial Gainful Activity (SGA)*

The first thing the judge has to do is determine whether you are making too much money to be considered disabled. This comes into play for clients who try to work while the claim is pending. Social Security calls this SGA or substantial gainful activity. The SGA amount for 2009 is \$980 per month (before taxes). If your earnings over the course of the year average \$980 per month or more, you probably cannot get disability benefits. The allowed amount goes up a little bit each year.

However, you are allowed to deduct certain expenses from your gross earnings in calculating whether you meet SGA. These deductions can include things like out-of-pocket costs for medicine, special equipment such as a scooter, and several other things. Save all receipts for expenses you incur because of your condition. You should consult your attorney to help

you figure out whether your income is above SGA. You should also **save your pay stubs** so you and your attorney can prove your actual earnings. If you're self-employed, you should save all the records of your gross income and your business expenses.

If you're working but earning less than SGA, you should make your attorney aware of this situation immediately.

If the judge determines that you are not engaging in substantial gainful activity, you move to step two.

### *Step 2: Severe Impairment*

Step Two involves the question of whether you have a "severe" impairment. Any diagnosed medical problem that reduces your ability to do basic work activities in a meaningful way qualifies as a severe impairment. Most people have no problem proving that their impairments are severe. If you are successful in proving that you meet the criteria for any of the remaining three steps, then you automatically have a "severe" impairment.

### *Step 3: The Listing of Impairments*

At Step Three, you have the potential, to use a boxing analogy, to win by a knockout. The "Listing of Impairments" sets forth specific medical criteria by way of diagnostic testing, clinical findings, and symptom severity for many common (and some not so common) medical conditions. If your condition meets the criteria for one of the listings, you win. You can skip Steps 4 and 5.

You can also skip Steps 4 and 5 if you can show that your condition equals a listing. To equal a listing, the judge has to appoint a medical expert (at Social Security's expense) to give an opinion on the issue. An example of equaling a listing occurs when you have a combination of impairments, none of which meets listing criteria by itself, but the combination is so severe that the overall result is as bad as a listing.

Meeting or equaling a listing is a technical and complex issue that you should discuss with your lawyer. It is an issue that needs to be considered in every case. If it is determined that you don't meet or equal a listing, then you move on to the next step.

#### *Step 4: Past Relevant Work (PRW)*

Step Four involves the question of whether you are capable of doing any of the kinds of work that you've done in the last 15 years. Social Security calls this your past relevant work (PRW). Only jobs that you've done for long enough to be at least average and in which you've earned at least the SGA level of income count as past relevant work. If it is determined that you are capable of doing any of your past relevant work, then you will be considered not disabled by Social Security.

In order to determine whether you are still capable of doing your past relevant work, the judge has to determine your residual functional capacity (RFC). This is what you are still capable of doing in spite of your medical condition. This brings us to Step Five.

### *Step 5: Inability To Do Other Work*

Step Five is where the rubber meets the road for most claimants. The question for this step is whether you are capable of doing any other job that exists in significant numbers in the national economy in light of your RFC, age, education, and work experience.

The judge uses a standard called the Medical-Vocational Guidelines (“the Grids”) to make this determination. The Grids consist of three charts which answer the step 5 question based on various combinations of RFC, age, education and work experience. The judge makes findings on each of these elements to determine which chart rule applies in your case.

The Grids apply only when your profile exactly fits into one of the categories in the three charts. If your profile does not exactly fit, the judge is required to use the Grids as a “framework” or guideline for making the decision. As an example, your profile might not fit the Grids if your RFC falls between light and sedentary work. Likewise, many people find that their profiles don’t fit into the Grids because their limitations are mental instead of physical (these are called “nonexertional impairments”). For example, you might have severe depression that makes it impossible for you to function at work. Other nonexertional impairments include things like environmental limitations (e.g., asthma that is set off by dust or fumes), postural limitations (e.g., need to elevate legs periodically), or manipulative limitations (e.g., can’t use hands repetitively). When a claimant has these types of limitations, the judge will often call a vocational expert to testify about how the restrictions affect the ability to do different types of jobs.

## *Applying the Grids*

In order to apply the Grids, the judge is required to assess each of the factors mentioned above: age, education, work experience, and residual functional capacity. I'll explain each one separately.

### *Age*

The Grids recognize that the older you get, the harder it is to adjust to new work. The Grids categorize claimants according to age: 18-44, 45-49, 50-54, 55-59, and 60-64. Sounds simple enough, right? But in some situations, if you are a few days or even months from the next more favorable category, it's possible to move up. The judge needs to find some additional "vocational adversity" to justify doing this (in other words, another reason besides age that you might have a problem adjusting to new work). But I have found that most judges are willing to do this in a close case as long as the claimant has been credible.

### *Education*

The judge looks at the highest grade you completed. For example, if you dropped out of school in the 11th grade, your education for purposes of the Grids is the 10th grade. The judge will also consider evidence of your current ability to read, write, and do simple math. I've found that some older claimants with a limited education whose past work did not involve a lot of reading and writing have gotten rusty in these areas. That's why it's important to tell your lawyer if you have any trouble with reading, writing, or simple math.

### *Work Experience*

The Grids lump work into three categories: unskilled, semi-skilled, and skilled. Unskilled jobs can be learned in 30 days or less. All other jobs are either semi-skilled or skilled, and they are treated the same way under the Grids.

### *Residual Functional Capacity*

Residual Functional Capacity is what you are still capable of doing in spite of your impairments. Social Security uses five work levels: sedentary, light, medium, heavy, and very heavy. Based on your medical records and your testimony, the judge is required to make a finding as to what level of work you are still capable of doing (your RFC). The following are basic definitions of the five work categories.

Sedentary work means a job that requires lifting no more than ten pounds at a time and being on your feet (standing or walking) no more than two hours total out of an eight-hour work day. Light work requires lifting up to twenty pounds at one time and standing or walking for six hours out of an eight-hour work day. Medium work has the same standing and walking requirements but also requires lifting up to fifty pounds at one time. Heavy and very heavy work are also defined, but if you are capable of either of these types of work, you will be considered NOT disabled under the Grid rules. However, keep in mind that people who are physically capable of doing heavy or very heavy work may still be found disabled if they have nonexertional limitations that prevent them from doing basic work activities (see **STEP 5** on page 23).

### *Vocational Expert Testimony*

If you have a semi-skilled or skilled work background, the judge is required to determine whether any skills you learned on the job would transfer to another job that you are still capable of doing. This is a complicated question, so most judges call a vocational expert to the hearing to testify on this subject. Transferability of skills is the single most complex area of disability law, so if this is an issue in your case, your lawyer should be prepared to cross examine the vocational expert about many different aspects of his or her testimony. This issue is critical in many claims, and it should never ever be handled by a non-professional.

### *Drug and Alcohol Abuse and Smoking*

Even if you meet the criteria for disability, you may not be eligible for benefits if you abuse alcohol or drugs. If this is an issue in your case, you will be required to prove that you would still be disabled even if you stopped using alcohol or drugs. This may be difficult. Many judges will tend to discount your credibility if the alcoholism or drug addiction is ongoing. Some will bend over backwards not to award benefits in these situations. They are unwilling to award benefits which will enable the pattern of abuse to continue or get worse. This is why it's important for you to be honest with your lawyer from the beginning if you have a problem with alcohol or drugs so that the issue can be addressed and dealt with early on. This same rule applies to smoking, especially if

your disability involves breathing problems like asthma, emphysema, or COPD.

The above applies only in situations where there is **current** abuse.



CHAPTER EIGHT  
LAWYER UP: WHEN, WHY, AND HOW TO CHOOSE  
A SOCIAL SECURITY ATTORNEY

*Why Hire an Attorney?*

An experienced lawyer will do a far better job of presenting your claim than you can. Statistics show that claimants who are represented have a greater chance of success than those who represent themselves. An experienced Social Security lawyer can:

- Identify any weaknesses in your claim and advise you on how to minimize them.
- Gather and submit the important medical evidence that supports your claim.
- Obtain employment or school records that support your claim.
- Insure that all necessary appeals are filed on time.
- Obtain statements from your doctors identifying your specific limitations, using language that the judge will understand.
- Prepare you to testify at the hearing.
- Tailor the presentation of your case specifically for the judge who is assigned to the hearing. Social Security judges are people too, and each one is different. They conduct their hearings differently, and they look at things differently. An experienced, local Social Security attorney will know each judge's preferences and what evidence each judge tends to emphasize in making decisions. This is a terrific advantage when planning strat-

egy for your case.

- Be prepared for and deal effectively with vocational issues in your case (see **Vocational Expert Testimony** above).
- Request reopening of previous applications if appropriate, which may increase the amount of back benefits you are awarded.
- Resolve the case more quickly by writing up the judge's final decision if requested.
- Answer any questions you may have along the way.

You can see now that the disability claims process is complicated and sometimes confusing. Not only that, the stakes are high. Let's look at a hypothetical example. A person who becomes disabled at age 50 files a claim and appears before the judge for a hearing when he's 52. The judge makes a favorable decision, and the claimant is awarded monthly benefits of \$1,750. He gets \$42,000 in back benefits plus another \$294,000 over the next 14 years, and then retirement benefits kick in. That's a total of \$336,000, not including the cost of living adjustments that will be made over the years. In addition, the claimant gets Medicare coverage. This type of health insurance is simply not available on the open market, at any price, to a person with serious medical problems.

In light of the complex issues involved and the high-stakes nature of the claim, the cost of hiring of an experienced Social Security attorney is a relative bargain. Our firm and most others charge a fee of 25% of the past-due benefits up to a maximum, which is currently \$6,000. So the claimant in the above example would pay a fee of \$6,000 (not 25% of the back

benefits, which would be \$10,500). This \$6,000 fee amounts to 1.78% of the total benefits of \$336,000. At Sullivan & Hepler, we also advance all costs which are necessary to present the claim properly. These typically range between \$150 and \$750 (more on that later). If we do not win the case, you don't have to pay us anything. In short, given the complex nature of the issues involved, what's at stake, and the relative cost, it makes good sense to hire a competent professional to handle your claim.

#### WHEN TO HIRE AN ATTORNEY

Most claimants will get a letter denying the claim a few months after the initial application is filed. You or your lawyer then has 60 days to file an appeal, which is called a Request for Reconsideration. Most claimants then get a second denial letter, which triggers another 60-day period during which another appeal must be filed. This second appeal is called a Request for Hearing. The Request for Hearing entitles you to have a hearing in front a judge.

Some law firms will take a Social Security case only when the claim has been denied at the initial or reconsideration level. Others will take a case right after the initial application is filed. At Sullivan & Hepler, we will consider a case at any stage in the process. Our philosophy is that the client benefits from representation at the early stages of the claim. The earlier we get involved in the claim, the better. Early representation allows us to advise a client about minimizing any weaknesses in the claim, and sometimes we can help clients get benefits before the case even gets to the point of seeing a judge.

### *How to Hire a Social Security Attorney*

Once you've decided to hire a lawyer, you must choose which firm is the best fit for you. This is an extremely important decision. Every firm is not a good fit for every client. You should find the firm that feels right for you. These are some of the things you should consider:

- Do you expect to meet with an attorney when you hire the law firm? Some firms assign only secretaries or paralegals for the initial client meeting. Worse yet, some firms do the initial intake on the phone and then mail the client a fee agreement to sign and mail back. At Sullivan & Hepler, an attorney handles the vast majority of initial client meetings. Only on rare occasions, a staff member conducts these meetings, usually when the potential client has time constraints or deadlines that our attorneys cannot accommodate. We will mail a fee packet **only** when a potential client we want to represent requests this. If for some reason (lack of transportation or a medical condition) the potential client cannot get to our office, we will make arrangements to meet either at the person's home or nearby rather than mail a packet. We feel strongly that a face to face meeting with a knowledgeable professional is essential to establishing a good attorney/client relationship at the very start.
- Is the firm a local firm that regularly appears before the judges in your area?
- How long has the firm been in business?
- What is the firm's reputation in the community? Ask

other people who have had Social Security claims about whether they were satisfied with the services of their attorneys.

- Has the lawyer been disciplined by the Florida Bar for misconduct? You can find out by logging onto [www.flabar.org](http://www.flabar.org).
- Does the law firm carry legal malpractice insurance?
- Are the attorneys at the firm members of the National Organization of Social Security Claimants' Representatives (NOSSCR)?
- How often do the firm's attorneys appear at hearings?
- What is your impression of the firm? Are you comfortable with the attorneys and the staff? Are they folks you will get along with well?



## ABOUT SULLIVAN & HEPLER

One of the reasons I wrote this book was to introduce potential clients to our office. I'm sure you're tired of seeing attorney advertising, most of which makes the same claims. "We're aggressive!" "We care about you!" "We fight for justice!" "It's all about you!" "Free consultation!" "No fee if no recovery!" The truth is that each firm is different, but you would never know that from the ads. This book was designed to provide Social Security disability applicants with an introduction to the claims process. Hopefully, it will allow you to ask the right questions when choosing an attorney for your claim.

At Sullivan & Hepler, our clients can expect: to be treated with respect, dignity, and compassion to have their questions answered in a timely fashion to have their phone calls returned in a timely fashion to have a free initial consultation, face to face with a professional to have their claims handled in a professional manner to have their claims evaluated with complete honesty.

At Sullivan & Hepler, we strive to make sure that every client is a good fit for us. You see, when we take on a case, we are investing our time and our money. We can't help everyone. When considering whether to accept a case, we ask ourselves two questions. First, is there is a reasonable chance of winning the case? It's a waste of our time and yours to take a case that doesn't present a reasonable chance of success. That doesn't mean your case has to be perfect—if your case has problems, we may still accept it as long as the problems are

fixable and you are committed to fixing them. Having said all that, we are always happy to talk to any sincere person who feels he or she is unable to work and deserves disability benefits. Even if we can't take the claim, we often give suggestions for other avenues of help or refer the person to another attorney who may feel differently about the claim. **The bottom line is don't hesitate to call us** about a potential claim.

The second question we ask ourselves is whether the potential client is someone we can get along very well with. The fact of the matter is that our business depends on having satisfied clients. A large percentage of our current clients were referred to us by satisfied former clients. If we sense that we cannot make a potential client happy, we will not take the case, no matter how good it is. A potential client must have realistic expectations about what we can and cannot accomplish. For example, the waiting period to get a hearing in front of a judge is sometimes two years or more; in most instances, this cannot be avoided. If a potential client wants to hire us just to speed up the process, that person is making a mistake.

The only other thing we insist on before taking a case is that the potential client is comfortable with our financial arrangements. We rely on our clients to reimburse us after winning a case for the costs we advanced. These costs include a flat fee of \$150 for postage, copies, faxes and file materials, plus out-of-pocket expenses for things like medical records and doctor reports. Some people feel that they should not be responsible for these expenses. That's fine—we respect that, but we believe that these people are being short-sighted in

light of what's at stake. You simply do not want a lawyer who will skimp in the preparation of your case. We will not do this, so we need to feel confident that we will be reimbursed for our costs. Think of it this way: when you take your car to the repair shop, you pay not only for time it took the mechanic to fix your car but also for the actual cost of the parts needed to make the repairs. Also remember that we will only ask for our costs back if we win the case. If we lose, we have lost not only our time, but also our money.

### **BE A GOOD PATIENT & KEEP A JOURNAL**

A successful Social Security claim has two parts: medical evidence and credible testimony about the symptoms that prevent you from working. The following two chapters will help you put these two key pieces into place.



## CHAPTER NINE

### BE A GOOD PATIENT

The medical records of your treating physicians are critical evidence in your case. The opinions of your doctors about the degree of your physical and/or mental limitations are also critical.

When you tell the doctor or the doctor's staff about your problems, be specific. Describe what physical activities cause you problems. Explain exactly where you hurt, what you have to do to relieve the pain, and what activities make your condition worse. Don't leave anything out. On follow-up visits, be sure to tell the doctor whether the treatment is helping you. **Don't** overstate your improvement just to please the doctor! If the doctor comes in and asks how you're doing, don't say "fine" if your medical condition is not "fine!" I can't tell you how many times I have read these remarks in medical records: "the patient reports feeling fine." I see this even in cases where it's obvious that it isn't true! Sometimes judges see this in the medical records and conclude that the claimant is lying at the hearing or exaggerating the symptoms. In summary, in communicating with your doctor and the staff, be specific, be honest, and include everything.

It is obviously important to maintain a good relationship with your doctor and the doctor's staff. How do you do this? Show them common courtesy, and treat them like professionals. Show up on time, and don't skip scheduled appointments. Also, make sure you don't give up on your medical treatment,

even if you are not improving as quickly as you think you should. If you skip appointments or stop treating altogether, the judge may get the impression that your symptoms aren't that bad. Also, follow your doctor's advice. If the doctor suggests that you do something like lose weight or stop smoking, try your best. Ask questions about how you can accomplish these goals. Report your progress to the doctor on the next visit. If you failed, at least tell the doctor that you tried and describe what you did. **Do not just ignore your doctor's advice!** Being non-compliant with your doctor's advice may give the judge a reason to deny your claim. The same goes for taking the medicine that the doctor prescribed for you, as it was prescribed. Don't decide on your own to take more or less than what was prescribed, especially with pain medication. If you do take more than was prescribed, you may be labeled as "drug seeking." If you take less (and don't tell your doctor) you may be labeled as a "malingerer" (faker). Being labeled like this will complicate your case and may even result in a denial of benefits. If you feel you need to make a change to your medication, contact your doctor's office to discuss it first. Finally, take only **your** medication. Don't borrow medication from friends or relatives.

Okay, so you've laid the groundwork for a great relationship with your doctor's office. You've been polite, you've kept your appointments, you've communicated effectively, and you've followed your doctor's advice—now what? Be a detective. Find out who in the office is the doctor's right-hand person. Most busy doctors have one of these. This person is the

one who controls access to the doctor. Try to make friends with this person. This is the person who can make sure the doctor finds the time to write a letter or fill out a questionnaire about your condition. Your doctor's opinion about your limitations can be the single most important piece of evidence in your file. You will find that obtaining this evidence is a lot easier if you have established goodwill by being a good patient.



CHAPTER 10  
KEEP A JOURNAL

The second part of a successful claim is credible testimony of severe symptoms that prevent work. What's the best way to convince the judge of your sincerity? We have come full circle. I started this book with the idea that your honesty is the most important thing about your case: you will simply not come across as honest if you are not being 100% honest.

The second most important factor in convincing the judge that your case is credible is speaking in specifics. The judge is much more likely to believe you if you can point out specific problems and describe how they prevent you from being able to work than if you talk in vague generalities. Compare these two descriptions of the same problem: (1) "My back hurts, even when I take my medication. I can't sit for more than 15 minutes at a time, and I can't stand for more than 10 minutes. The pain is so bad that I can't even concentrate long enough to read a story in the newspaper." (2) "I can't work because my back hurts." Which is more convincing?

The main problem with giving specific answers is the length of time it takes to get your hearing. Most people simply don't keep track of their condition closely enough over time to be specific when the hearing is finally scheduled. The best way to deal with this is to keep a journal. For this journal to be useful to you and your attorney, it should be short and sweet—a few lines per entry is all you need. These few lines can include things like:

- Your pain level on a scale from 1 to 10.
- What you did that made your condition worse. For instance, if you mopped your kitchen floor for 10 minutes and it made your back hurt so much that you had to lie down for an hour, make a note of that.
- What things relieved your pain. For instance, did you use a heating pad to make your back feel better? Did you use ice? Did it help, and how long did it last? Make notes of these things.
- Your sleep patterns. Did you have trouble falling asleep, and did you wake up frequently during the night? Did you have to take a nap during the day to make up for lost sleep? How many hours of sleep did you get, and how long was your nap? Jot these things down.
- What side effects you experienced from your medications. Make notes about them about how long they lasted.
- What happened at your doctor's appointment. Make notes about anything different or unusual.

These are just examples. The important thing is that you want to record the things that show why you can't work. If you keep this journal and review it before your hearing, you will be in a much better position to give specific testimony.

Keeping a journal is especially important if your condition is one that comes and goes. A perfect example of such a condition is migraine headaches. Whether a person is disabled from migraines depends on how often they occur, how long they last and how long it takes to recover from them. If

you've kept a journal over a period of time, it will be a lot easier to give specific testimony rather than general estimates from memory. Specific testimony is far more credible.

SULLIVAN & HEPLER  
1644 BLANDING BLVD.  
JACKSONVILLE, FLORIDA  
32210

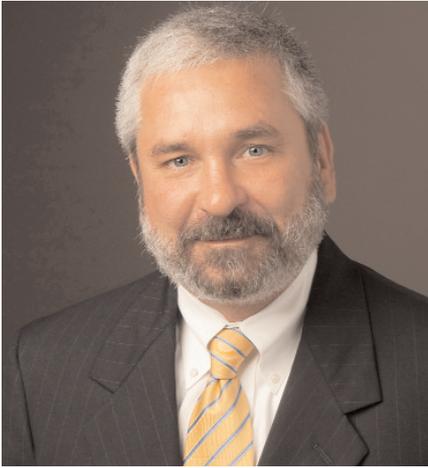
904 384 8808

[www.sullivanandhepler.com](http://www.sullivanandhepler.com)



WA

# cutting through the red tape



TOP TEN THINGS  
ALL FLORIDA SOCIAL  
SECURITY DISABILITY  
APPLICANTS  
SHOULD KNOW



**SULLIVAN & HEPLER** PRACTICE IN THE AREAS OF SOCIAL SECURITY DISABILITY, WORKERS' COMPENSATION, VA COMPENSATION, AND CRIMINAL DEFENSE.



**MICHAEL P. SULLIVAN** has been representing the disabled in Social Security cases since 1994. He was educated at Boston College and received his law degree at Suffolk University Law School. Mr. Sullivan used his experience to write this book in an effort to familiarize Social Security disability claimants or potential claimants with the application process and warn them about potential traps. For more information about Social Security disability claims, please visit [www.sullivanandhepler.com](http://www.sullivanandhepler.com) or call us at 904 384 8808.

\$16.95



WORD ASSOCIATION  
PUBLISHERS  
[www.wordassociation.com](http://www.wordassociation.com)  
1 800 827 7903

