

How do I Win my Social Security Case for a Medical Condition that Cannot be Seen on a Diagnostic Test?

I get a lot of questions about fibromyalgia and other medical conditions that rely on subjective reporting by patients. These cases are definitely getting more difficult to win. Here is a question sent to me by a blog reader that describes an increasingly typical situation:

I'm 41 yrs old and have been suffering for many years with narcolepsy and fibromyalgia. My sleep disorder actually falls between narcolepsy and idiopathic hypersomnolence. My family and myself are falling apart because of my disabilities. I've applied for disability in the past and was denied. I'm applying again and wanting to ask you how do i go about applying to prove my disability since its been denied in the past? How much weight does testimonials from family and friends carry? How much weight does a signed letter from my doctor saying, i can't work/drive its unsafe, carry?

Here are my thoughts: I am not surprised that you have had a difficult time with Social Security. As you probably know, Social Security defines disability in terms of your capacity to work a simple, entry-level type of job. Basically you have to prove that the symptoms of your medical condition or conditions are so intrusive, that you cannot work at any job, full time.

As the person claiming disability you have to prove that you are unable to work - you do this by submitting medical records, and, even better, a functional capacity form completed by your doctor that identifies specific activity limitations.

The judge considering your case then has to accept your argument and your doctor's conclusions about your capacity to work.

Some medical conditions lend themselves more than others to work capacity limitations. Specifically medical conditions in which severity can be evaluated with objective testing are more readily approved. Examples include

1. MRI scans (for spinal disc problems)
2. CT scans (for neurological issues)
3. pulmonary function testing (for breathing and cardiac diseases)
4. heart pumping capacity testing (ejection fraction calculations for heart diseases)
5. liver function testing (for liver diseases)

Other medical conditions are well known to be progressive, degenerative and debilitating, such as

1. multiple scleroris
2. muscular dystrophy

3. lupus
4. Type I diabetes

Then there are those conditions that are difficult or impossible to measure, or they rely on subjective reporting by the patient. Narcolepsy, fibromyalgia and idiopathic hypersomnolence would fit into this category.

There is no doubt that any one of these three conditions could produce symptoms that would substantially interfere with your capacity to perform simple, entry-level work. The problem is that the judge has no way of evaluating the severity of your symptoms.

- The judge can listen to your testimony, but that is obviously self-serving and a Social Security judge will need more than your statements about the severity of your condition.
- The judge can look at medical treatment records produced by your doctor, but most medical notes do not focus on work capacity - they focus on your complaints, the doctor's treatment decisions and whether or not various treatment options have worked.
- The judge can look at a functional capacity form that identifies specific work activity limitations. This is your most powerful tool, but it must be supported by treatment notes. Note that a functional capacity form is more than a statement from your doctor stating that you are disabled. A functional capacity form (which will be drafted by your lawyer), identifies your ability to perform a variety of activities relevant to work. These could be physical - such as an evaluation about how much you can lift or whether you can use foot controls, or non-exertional - such as an opinion about whether you experience pain at a level that interferes with your capacity to maintain attention and concentration up to 2/3 of the day. Most functional capacity questionnaires contain 25 to 30 questions that address multiple issues relating to your reliability.

When I am representing a client with one or more of these hard to measure medical conditions, I know that I will be facing an uphill battle. In order to give myself the best chance at winning I will want to see:

- records of on-going medical treatment - showing that my client is seeking a cure
- one or more functional capacity forms completed by treating doctors, ideally medical specialists - and these forms must show reliability limitations such as a need for excessive breaks during the workday
- clear and specific testimony from my client about his/her limitations - no "I can't stand very long and I can't lift very much." I will need specifics
- evidence of unsuccessful work attempts - when a disability claimant tries and fails to return to work, that work attempt enhances the claimant's credibility
- evidence of a long work history - here, too, a person who has worked continuously for many years will have more credibility than someone with a spotty work record
- adherence to and compliance with the treating doctor's treatment regimen

As far as letters of support from friends and family, those won't hurt, but your judge will not give these statements much weight either. Your friends and family are not disinterested, objective

sources so the judge will give these statements minimal credit.

I have definitely noted that Social Security judges are far less likely than before to approve claims for medical conditions that cannot be directly observed. These cases are still viable but the evidentiary requirements have gone way up.