SOCIAL SECURITY/DISABILITY PARALEGAL

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ALL OF THE BELOW DUTIES ARE ASSUMED TO, AND MUST BE, UNDER THE DIRECTION AND SUPERVISION OF A LICENSED ATTORNEY.

A. FORMS OF ACTION

1. There are two basic forms of action:

a. Appeal of decision regarding an initial Social Security Disability Insurance (SSDI) and/or Social Security Supplemental Security Income (SSI) claim.

b. Continuing Disability Review (CDR) action by the Social Security Administration (SSA) regarding SSI and/or SSDI benefits. This action is similar to the claim decision appeal process.

c. These actions are taken within regulations governing the SSA. In part, under CFR, Title 20, Part 404 and CFR, Title 20, Part 416. Primarily, but not exclusively, under supra 404, subpart J and supra 416, subpart N.

d. This is an action of client advocacy before the Social Security Administration.

e. There is an extensive reference and research resource regarding procedures, rules, regulations, and statutes and is available within the SSA web site (http://www.ssa.gov, especially http://www.ssa.gov/pubs).

2. The fees and expenses are accounted for and paid, or collected, in accordance with SSA regulations. There will be no collection of fees and/or expenses from the client for SSDI action. There is collection of fees and/or expenses from the client for SSI actions.

3. Here, it also should be noted that there are time bars regarding action by the party applying for Social Security benefits. There are no time bars or other similar limitations for actions by the agency regarding the claim. It is not unusual for a single appeal action to take 2 years or longer. In large part, this is due to the extensive caseload within the Social Security Administration departments or sections.

4. Precedent conditions:

a. An initial benefits claim submitted to the SSA, for SSDI and/or SSI, that has been denied; or, a determination that terminated eligibility for SSDI and/or SSI benefits.

b. At initial contact with prospective client, request that the client bring with them whatever information that they may have regarding the circumstances of their disability (to include contact information for treatment providers and records if available) and documents of the claim for benefits to an interview.

c. Appeal of decisions regarding SSDI and/or SSI claims must be filed with 65 days of the date of the initial decision letter. A request for exemption from this time bar can be requested if evidence can be provided that the decision letter was received more than five (5) days following the date of the letter, or if evidence of good cause can be provided regarding the reason why the appeal is being filed out of time.

B. SCREEN PROSPECTIVE CLIENTS BY PERSONAL INTERVIEW

1. Telephone interviews are acceptable under circumstances involving distance and/or disability. This is based upon the decision of the attorney.

C. COMMENCEMENT OF ACTION

1. If agreement is reached for representation of the client, certain documents will need to be executed. Among these are:

a. SSA 1696, Appointment of Representative.

b. A fee agreement between the client and the firm.

c. A form authorizing release of treatment information and records to the attorney and applicable staff. This is usually an "in-house" form.

d. HA-501-U5, Request for Hearing by Administrative Law Judge.

e. SSA-4486, Claimant’s Statement When Request for Hearing is Filed and the Issue is Disability, with an attached list of medications if applicable.

f. SSA-827, Authorization to Disclose Information to the Social Security Administration (5 copies).

2. Notes:

a. The SSA1696 is required to establish the existence of the representation to the Social Security Administration.

b. The fee agreement establishes the mechanism for payment of fees and expenses by the SSA.

c. The firm information release form must conform to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and may need to be modified (on case-by-case basis) to satisfy various treatment provider entities.

d. Additional documents will be required during the claim appeal process.

e. This list is not exclusive or complete. Additional documents will be applicable due to the unique circumstances of each claim.

3. Configure client account and file for firm records, to include:

a. Identification and contact information for the client. Include the caregiver and/or parent if applicable.

b. Current physical and/or mental circumstances of client.

c. History of the client's circumstances.

d. Current status and history of the Social Security claim.

e. Listing of the treatment providers and/or sources for treatment records.

f. Copies of all SSA documents.

g. The original fee agreement document.

h. Copies of the available treatment records.

4. Submission of documents to the SSA:

a. A cover letter declaring the representation of the client; and the intent of the client to appeal the SSA decision regarding the initial benefits claim application.

b. The originals of all SSA documents.

c. A copy of the fee agreement.

d. Originals, if available, of treatment records.

D. DEVELOPMENT OF CLAIM/CASE

1. SSDI eligibility is based upon the claimant's employment and income history. SSI eligibility is based upon need, when the claimant has no income or employment history sufficient to qualify for SSDI. Determine the issue of eligibility based upon income and employment history; then upon physiological and/or psychological issues.

2. Eligibility issues based upon income and/or employment history are addressed within supra 404 subparts H, I, K, M, N, O; and supra 416 subpart B. These issues have to be satisfied first. When a claimant does not satisfy the income and eligibility requirements for disability benefits (SSDI), then the application is for supplemental income assistance (SSI). If eligibility requirements are satisfied, then application can be made for both benefit programs.

3. When the eligibility requirements for income and employment history are satisfied, then development of the mental and/or physiological case can be started.

4. Research and verify the contact information for the treatment providers and records.

5. Contact the providers to determine if they have applicable treatment records and if they will accept facsimile transmitted (faxed) requests for information.

a. If the provider will accept faxed requests, what is the appropriate telephone number and contact for submitting a request.

b. If the provider does not accept faxed requests, what is the appropriate method and contact for submitting a request.

c. Identify any affiliations that providers may have with other organizations.

6. If the provider does not possess the information, inquire about what entity does possess the information.

7. Draft and submit the request, with a copy of the information release form, to the applicable entity.

8. Note: Be prepared to submit prepayment for the records; and a modified or entity specific release form may be required for access to the records.

9. When medical records are received from treatment providers, they will usually be photocopies of the patient records or reproductions of microfiche files.

10. Following review of the records by the applicable attorney:

a. Make sure that the records are not duplicates of other records previously submitted or already in the SSA client file.

b. Make sure that the records are in ascending chronological order.

c. Copy the records to be submitted for the client file.

d. Two-hole punch the 'original' records that are to be submitted. Specifications for two-hole punch of medical/treatment records submitted: Left side of the document; approximately 1/4" in from edge; 4" from top and bottom of page; and about 2 1/2" separation between the holes.

e. Submit the 'original' records to SSA, with a cover letter.

11. Note: Only those documents that could be considered to state conclusions, opinions, significant points and/or developments during treatment (examination, treatment overview, progress notes, medication, and evaluation reports) *i.e.*, 'big picture' documents are submitted. CFR, Title 20, Part 404.1501 through 1541 and CFR, Title 20, Part 416.912 through 919(a-t).

12. During the passage time for the claim appeal process, occasionally contact the client and/or submit requests for newer treatment records.

13. Note: It can take up to six weeks to receive the requested records, depending upon the age, volume, and source of the records. Occasionally, records can be received sooner, if a request to expedite the retrieval process is submitted and if the records are available.

14. When the claim reaches the local SSA Office of Hearings and Appeals (OHA), the file will be reviewed, researched, and a List of Exhibits will be prepared. At this point the claim file will have a status of being 'ready to schedule' for a hearing. Schedule an appointment to review and/or copy the file. This is similar to the discovery applicable to civil or criminal matters.

15. Note: The attorney and/or paralegal must periodically contact the OHA to check the status of the claim file; otherwise the time period for submitting additional evidence will be limited to that period immediately before the hearing itself.

16. A credential letter, to the OHA, is required if a paralegal, or a person other than the claimant or attorney/representative, is to review and/or copy the client file. This has to be signed by the attorney/representative or the claimant. The original, of the credential letter, will become part of the client file. A copy of the letter should be kept for the firm client file.

17. If the OHA determines that additional evidence is required, correspondence will be sent, via the postal service, identifying the information and sources required; or that the OHA has contacted an applicable department of human or social services to schedule a consultative examination (CE). The CE is performed by personnel and/or agencies that are under contract for these services. A copy of the CE report must be requested from the SSA by either the client or the representative.

18. Once the OHA processing of the claim file is completed, then a Notice of Hearing is sent to the client (and representative) at least 20 days before the scheduled hearing date. Included with the letter is a form to be completed and returned by the client. This form is an acknowledgment and either commitment to the date, or statement of a reason why the client would be unable to attend the hearing on the date scheduled. Note: Occasionally the OHA will contact the representative/attorney to clear the hearing dates being considered anywhere from 30 to 60 days before the letter is to be printed and mailed.

E. THE HEARING

1. The hearing itself is an administrative law action conducted by an Administrative Law Judge (ALJ); and usually attended by a clerk/recorder, the client/claimant, their representative/attorney, and applicable medical and/or vocational experts as requested by the ALJ. This is an opportunity to present the arguments in advocacy for the client/claimant. This is an evidentiary hearing. Reference 20 CFR 404 Subpart J.

2. If deemed capable, the client will be questioned by the ALJ. Then the circumstances of the claim will be reviewed and discussed in comparison to hypothetical models of similar or differing characteristics. The ALJ then has the option to declare a decision at the hearing; or to conclude the hearing before making any decision.

3. Following the hearing, the ALJ will write his decision, in accordance with applicable law, rule, and regulation. The decision is then sent to a publishing section; then to other applicable processing sections, depending upon the factors of the decision. The process of publication of the decision could take another three to four weeks. The processing the claim within other SSA sections could take an additional four to six weeks.

4. In some circumstances, dependent upon the strength of the evidence within the claim record, and the opinion of the attorney/representative; a request can be submitted for a ruling ‘on the record’. Occasionally, the ALJ will decide to issue a ruling ‘on the record’. Again, this is based upon the strength of the evidence with the claim record. Either way, this is a process that avoids the necessity of scheduling and holding a hearing for review of the claim.

F. APPEALING THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

1. Any decision can be reviewed. For instance, a fully favorable decision may need to be reviewed because the onset date of disability found by the ALJ is unfavorable to the claimant. If the claimant does not agree with the decision, a request for review of the decision can be filed with SSA within 65 days of the date of the letter of the decision. A request for review of the ALJ decision can be requested with submission of cover letter and an appeal brief to the SSA Appeals Council. The SSA Appeals Council; located in Falls Church, Virginia; reserves the right to review any decision for whatever reason.

2. With the conclusion of the previously discussed hearing, the record of the claim is closed to the addition of additional evidence; unless specifically requested by the ALJ, or an agent of their office acting upon specific instruction. The appeal brief cannot raise new issues to be considered regarding the circumstances of the claim or the decision thereof. It can introduce new evidence, which should have been considered by the ALJ (*i.e.*. a doctor's record that was received after the hearing, but addressed circumstances within the period of time of the claim); a collateral attack upon the decision; or upon elements of the decision within arguments of regulation, statute, and case law.

3. After exhaustion of all other options for action within the regulatory system of the SSA, the final option is to request judicial review of a decision. This is initiated by filing of a lawsuit action, against the United States Government Social Security Commissioner, in the Federal District Court system. This must be filed within 65 days of the date of the decision of the Appeals Council regarding the requested ALJ decision review. The procedures for this action are outside of the intended scope of this document.