



PROFESSIONAL ADVOCATES, INC.

SOCIAL SECURITY DISABILITY

HEARING HANDBOOK

www.professionaladvocatesinc.com

TIPS FOR HEARINGS VIA PHONE

Please adhere to these suggestions. The hearing is being recorded and if we cannot get a clear recording over the phone the hearing will be stopped and you will have to wait for it to be rescheduled for an in-person hearing, and under the circumstances this is an unknown timeline. Please do the best you can so you do not have to wait any longer than you already have. Thank you for your patience and understanding during this difficult time. Absolutely, everyone understands this is difficult and we are all working together to keep the Social Security system operating and our clients' cases moving forward.

- The call will come from 702-239-1446 or from a 410 area code. Answer the phone when we call. I will text you prior to calling.
- Please talk clearly and LOUDLY. It can be very difficult to hear on the phone. If the Judge cannot hear you sufficiently for your testimony to be recorded we will ask you to speak louder.
- If at all possible, please DO NOT use your phone on speaker phone. It is much harder to hear if you are on speaker phone and this makes the proceeding very frustrating for the Judge.
- If I cannot hear you I will say "WE CAN'T HEAR YOU" and the you should adjust your phone.
- Don't move around or have anyone in the background during the hearing.
- You need to be in a very quiet environment where no one will interrupt you for at least 30-60 minutes.
- No background noise will be allowed. Everything can be heard. I even have to mute my phone if I type because that's too loud and the Judge cannot hear.
- Wait for a few seconds after someone has stopped speaking. There is a 2 second lag between talking and the other person hearing you.



DO's & DON'Ts

1. Do bring a valid, unexpired ID to the hearing. Do not bring guns, knives, mace, bullets, machetes, alcohol, etc. into the hearing office. This is a Federal building!
2. You should arrive ½ hour prior to the hearing. Please contact the representative if you are late or lost.
3. You may address the Judge as “Your honor” or “sir” or “ma’am”.
4. You *must* testify and will do most of the talking. Do tell the truth. Do not exaggerate. Everything and then some is already in your records, even if you don’t remember telling anyone.
5. The hearing will be audio recorded (no video). Please answer questions verbally with a “yes” or “no”. uh-huh or nuh-uh or head shaking cannot be understood or seen on a recording.
6. Please speak loudly and clearly near the microphone. The microphone does not make your voice louder.
7. Please allow questions to be completed before answering, do not interrupt. If you don’t understand a question, tell the judge you do not understand.
8. You may not ask the representative to help you answer questions or to clarify information or talk to the representative on the side/off the record. Simply say that you don’t know the answer or that you are going to give the judge an estimate but that it may not be 100% accurate.
9. Please keep your answers short until you are asked the question “What medical impairments prevent you from working?” Then you can say anything you would like!
10. The representative will do some talking and you may think it is not enough, but the Judge only allows the representative to speak at certain times. We are advocating for you in writing before the hearing and at appropriate times during the hearing. This is not like what you see on television or like any other proceeding you may have been involved in. Talking out of turn by anyone will result in admonishment by the Judge.
11. Do not try to talk or make comments when the Vocational Expert is testifying towards the end of the hearing. *After* the expert has finished testifying you may let the Judge know you have something additional to say.
12. If you need to stand up during the hearing, please stand up!
13. Decisions are in writing and take approximately 90 days. HOWEVER, Judges DO NOT have a deadline in which to make a decision. We must wait. They will not tell me over the phone. (With some Judges, the representative may have a better idea of the way they Judge may decide after the hearing and we will advise you of our thoughts.)
14. If the case is approved, the file goes back to the local office for payment. The Judge has nothing to do with payment and the local office cannot change the disability decision. It may take another 60 – 90 days for payment to be calculated and disbursed. We will get additional notices regarding payment from the local office.
15. If the case is denied, we will discuss our decision regarding possible further Appeals.



**PROFESSIONAL
ADVOCATES, INC.**
Social Security Disability Representation

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Noel S. Anschutz

Professional Advocates Inc. is committed to obtaining a successful case outcome for you, and our goal is to reduce your anxiety and provide you with the best client service in Nevada.

Ms. Anschutz's strong civil litigation, legal aid background, and 17-year practice of Social Security disability law with appearances at over 3000 disability hearings, defines her as an experienced and committed Professional Social Security Disability Representative. Noel obtained her American Bar Association approved Associates Paralegal degree in 1996 and in 2001, her Business Administration Bachelor's degree. In 2005, Noel became Nevada's first eligible Professional Representative under a program made permanent by President Obama; the "Social Security Disability Applicants' Access to Professional Representation Act of 2010." Noel represents clients and is the Owner of Professional Advocates Inc.

EDUCATION

| | | |
|---------|---|------------------------|
| 08/2001 | BACHELOR OF SCIENCE - BUSINESS ADMINISTRATION | University Of Phoenix |
| 05/2006 | ASSOCIATE OF APPLIED SCIENCE - PARALEGAL STUDIES (ABA APPROVED) | Pima Community College |

PROFESSIONAL AFFILIATIONS

| | | |
|------------------|---|----------------|
| 7/2007 - Present | NEVADA STATE BAR DISCIPLINARY BOARD | Member |
| 8/2010 - Present | NEVADA LAW FOUNDATION BOARD OF TRUSTEES | Member |
| 5/2006 - Present | COLLEGE OF SO NEVADA PARALEGAL STUDIES ADVISORY BOARD | Member |
| 1/2004 - Present | LEGAL ASSISTANT DIVISION OF THE STATE BAR OF NEVADA BOARD | Member |
| 5/2002 - 6/2012 | PARALEGAL ASSOCIATION OF SOUTHERN NEVADA | Past President |
| 5/2002 - 6/2012 | NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS | Member |

SEMINARS TAUGHT

| | | |
|------------|--|--------------------|
| Oct 2012 | NATIONAL BUSINESS INSTITUTE: SOCIAL SECURITY BOOTCAMP - MENTAL IMPAIRMENT CLAIMS | Speaker |
| 2010 | SOCIAL SECURITY DISABILITY ORIENTATION - AID FOR AIDS OF NEVADA | Speaker |
| 2010 | SOCIAL SECURITY DISABILITY ORIENTATION - SOCIAL SERVICE AGENCIES SERVICING THE HIV/AIDS POPULATION | Speaker |
| since 2001 | ANNUAL DISABILITY FAIR - SO NV CENTER FOR INDEPENDENT LIVING | Community Outreach |

WHAT SOCIAL SECURITY SAYS ABOUT REPRESENTATIVES

- Non-attorneys eligible for fee withholding **have the most experience** representing disability claimants and are **most likely to specialize in disability representation**
- Administrative law judges expressed equal satisfaction with the performance of attorneys and eligible non-attorneys
- Judges expressed satisfaction and some went on to say that eligible **"non-attorneys tend to be better prepared and more familiar with the details of their cases than attorneys"**
- "Many of these judges expressed the view that **experience in disability representation rather than formal legal training is the key to effective representation**, or that it is not necessary to have a law degree to effectively represent disability claimants."

<http://www.gao.gov/new.items/d085.pdf>

WHY ARE SO MANY SOCIAL SECURITY CLAIMS DENIED ?

| | | |
|--|--|--|
| <p style="text-align: center;">INITIAL (DDS – Carson City)</p> | <p style="text-align: center;">65 % denied</p> <p style="text-align: center;">*Approximately 6 months to make decision</p> | <p>1. Are you over 50 yrs old and have performed a “sit-down” job? 2. Are you under 50 yrs old?</p> <p>Then you have to prove your functional capacity is “less than sedentary” (means you can’t even do a “sit down” job)</p> <p>At first two levels, Social Security only finds people have a functional capacity of less than sedentary in 6% of cases. So it is very difficult to get approved.</p> |
| <p style="text-align: center;">RECONSIDERATION (DDS – Carson City)</p> | <p style="text-align: center;">87% denied</p> <p style="text-align: center;">*Approximately 6 months to make decision</p> | <p>In order to be approved at the first two levels you usually have to either:</p> <ul style="list-style-type: none"> ▪ Meet medical criteria (very stringent) OR ▪ If over 50 yrs old: You can’t have any past work that involved sitting <i>and</i> you must be found not able to return to your past work. |
| <p style="text-align: center;">HEARING (Admin Law Judge)</p> <p style="text-align: center;">*Approximately 15 months for hearing to be scheduled</p> | <p style="text-align: center;"><i>BEST CHANCE OF APPROVAL AT A HEARING</i></p> <ul style="list-style-type: none"> ▪ 66% of the time Judges find functional capacity is less than sedentary. ▪ Judge was a lawyer. ▪ You get to tell the Judge things the medical records don’t. ▪ 3rd set of Social Security rules come into play ▪ The Judge can make decisions “outside the box.” ▪ We give the Judge a medical summary. ▪ We win a majority of the time. <p>* Reviewers using the ALJ approach concluded that 48 percent of the cases should have received awards, while reviewers using the DDS approach concluded that only 13 percent of those same cases should have received awards.</p> | |

******* HEARING QUESTIONS**

BASIC QUESTIONS:

Address:

Ph No.

Date of Birth:

Marital Status:

Who do you live with?

Schooling (education / degrees?):

Military duty?:

R / L handed?:

Height:

Current Weight: How long at weight? Normal weight?

Do you drive? automatic? restrictions on lic?

WC / Unemployment?

Have you ever been in jail or prison?
when, why, how long etc / probation or parole?

SUBSTANCE USE:

Do you smoke cigarettes? how much?

Drink alcohol? Hx?

Use illegal drugs? Hx?

WORK:

Type of Work? (15 yrs)

When was the last time you worked?

Why did you stop working?

MEDICAL CARE:

Physicians / Doctors you are currently seeing

Review of Medication List & Side Effects

What do you think are the medical problems that affect your ability to work? (Diagnosis, Date, Pain, Treatment, Non Exertional)

PAIN

Location

Duration

Frequency

Intensity

Treatment to relieve pain

Other measures to relieve pain

****YOU DO NOT NEED TO ANSWER THESE QUESTION IN WRITING. YOU CAN MAKE NOTES IF YOU WOULD LIKE , BUT DO NOT SEND THIS BACK TO US. THIS IS ONLY FOR YOUR REFERENCE.**

Aggravating factors that increase pain

MENTAL HEALTH

Problems with Sleep: naps? Fatigue?

Examples of ways you have structured your activities to minimize your symptoms / lowered your psychological pressures: (phys/mh)

Do you have difficulty with changes in routine: (mh)

Do you think you would have problems getting to work regularly? (mh)

Problems with Memory: (mh)

Diff w/ focus & concentration: (mh)

Why? Fatigue, distraction, se rx

Problems getting along with friends or family: (mh)

co-workers? Fired?

Does anything prevent you from performing simple instructions: (mh)

ISSUES:

Assistive devices - walker, braces

ADL's:

What do you do on an average day:

Entertainment inside: Video games / Reading/ Using computer:

Entertainment outside: Social Clubs/ Church/ Eat out/ Library

Do you get dressed every day:

Current hobbies:

Pets:

Cooking:

Grocery Shopping:

Laundry:

Housework:

EXERTIONAL LIMITATIONS: (on an average day)

SIT: If you were allowed to shift around in an office chair, similar to what you are sitting in now, how long can you sit before you have to get up?

STAND: How long can you be on your feet?

Walking around:

Problems?

LIFT: How much weight can you lift w/ 1 hand?

With both hands?

ALT SIT/STAND: (30min/5min – how many hrs?)

Moderate limitation in CPP:

The hypothetical claimant would experience a twenty percent reduction in productivity from an employer's norm



COMMON MENTAL HEALTH IMPAIRMENTS CATEGORIES OF FUNCTIONING AND EXAMPLES OF IMPACT



CATEGORIES OF FUNCTIONING

How do your symptoms impact areas of your life?

1. ***Understand, remember, or apply information (paragraph B1).*** This area of mental functioning refers to the abilities to learn, recall, and use information to perform work activities. Examples include: understanding and learning terms, instructions, procedures; following one- or two-step oral instructions to carry out a task; describing work activity to someone else; asking and answering questions and providing explanations; recognizing a mistake and correcting it; identifying and solving problems; sequencing multi-step activities; and using reason and judgment to make work-related decisions. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the example
2. ***Interact with others (paragraph B2).*** This area of mental functioning refers to the abilities to relate to and work with supervisors, co-workers, and the public. Examples include: cooperating with others; asking for help when needed; handling conflicts with others; stating own point of view; initiating or sustaining conversation; understanding and responding to social cues (physical, verbal, emotional); responding to requests, suggestions, criticism, correction, and challenges; and keeping social interactions free of excessive irritability, sensitivity, argumentativeness, or suspiciousness. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.
3. ***Concentrate, persist, or maintain pace (paragraph B3).*** This area of mental functioning refers to the abilities to focus attention on work activities and stay on task at a sustained rate. Examples include: initiating and performing a task that you understand and know how to do; working at an appropriate and consistent pace; completing tasks in a timely manner; ignoring or avoiding distractions while working; changing activities or work settings without being disruptive; working close to or with others without interrupting or distracting them; sustaining an ordinary routine and regular attendance at work; and working a full day without needing more than the allotted number or length of rest periods during the day. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.
4. ***Adapt or manage oneself (paragraph B4).*** This area of mental functioning refers to the abilities to regulate emotions, control behavior, and maintain well-being in a work setting. Examples include: responding to demands; adapting to changes; managing your psychologically based symptoms; distinguishing between acceptable and unacceptable work performance; setting realistic goals; making plans for yourself independently of others; maintaining personal hygiene and attire appropriate to a work setting; and being aware of normal hazards and taking appropriate precautions. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.



12.04 Depressive, bipolar and related disorders

(see 12.00B3), satisfied by A and B, or A and C:

- A. Medical documentation of the requirements of paragraph 1 or 2:
1. Depressive disorder, characterized by five or more of the following:
 - a. ***Depressed mood;***
 - b. ***Diminished interest in almost all activities;***
 - c. ***Appetite disturbance with change in weight;***
 - d. ***Sleep disturbance;***
 - e. ***Observable psychomotor agitation or retardation;***
 - f. ***Decreased energy;***
 - g. ***Feelings of guilt or worthlessness;***
 - h. ***Difficulty concentrating or thinking; or***
 - i. ***Thoughts of death or suicide.***
 2. Bipolar disorder, characterized by three or more of the following:
 - a. ***Pressured speech;***
 - b. ***Flight of ideas;***
 - c. ***Inflated self-esteem;***
 - d. ***Decreased need for sleep;***
 - e. ***Distractibility;***
 - f. ***Involvement in activities that have a high probability of painful consequences that are not recognized; or***
 - g. ***Increase in goal-directed activity or psychomotor agitation.***

How do these symptoms impact areas of your life?

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see [12.00F](#)):
1. Understand, remember, or apply information (see [12.00E1](#)).
 2. Interact with others (see [12.00E2](#)).
 3. Concentrate, persist, or maintain pace (see [12.00E3](#)).
 4. Adapt or manage oneself (see [12.00E4](#)).

OR

- C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
1. **Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see [12.00G2b](#)); and**
 2. **Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see [12.00G2c](#)).**



12.06 Anxiety and obsessive-compulsive disorders

(see [12.00B5](#)), satisfied by A and B, or A and C:

- A. Medical documentation of the requirements of paragraph 1, 2, or 3:
1. Anxiety disorder, characterized by three or more of the following;
 - a. Restlessness;
 - b. *Easily fatigued*;
 - c. *Difficulty concentrating*;
 - d. *Irritability*;
 - e. *Muscle tension*; or
 - f. *Sleep disturbance*.
 2. Panic disorder or agoraphobia, characterized by one or both:
 - a. *Panic attacks followed by a persistent concern or worry about additional panic attacks or their consequences*; or
 - b. *Disproportionate fear or anxiety about at least two different situations (for example, using public transportation, being in a crowd, being in a line, being outside of your home, being in open spaces)*.
 3. Obsessive-compulsive disorder, characterized by one or both:
 - a. *Involuntary, time-consuming preoccupation with intrusive, unwanted thoughts*; or
 - b. *Repetitive behaviors aimed at reducing anxiety*.

How do these symptoms impact areas of your life?

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see [12.00F](#)):
1. Understand, remember, or apply information (see [12.00E1](#)).
 2. Interact with others (see [12.00E2](#)).
 3. Concentrate, persist, or maintain pace (see [12.00E3](#)).
 4. Adapt or manage oneself (see [12.00E4](#)).

OR

- C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
1. *Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see [12.00G2b](#)); and*
 2. *Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see [12.00G2c](#)).*



12.15 Trauma- and stressor-related disorders

(see [12.00B11](#)), satisfied by A and B, or A and C:

- A. Medical documentation of all of the following:
- 1. Exposure to actual or threatened death, serious injury, or violence;**
 - 2. Subsequent involuntary re-experiencing of the traumatic event (for example, intrusive memories, dreams, or flashbacks);**
 - 3. Avoidance of external reminders of the event;**
 - 4. Disturbance in mood and behavior; and**
 - 5. Increases in arousal and reactivity (for example, exaggerated startle response, sleep disturbance).**

How do these symptoms impact areas of your life?

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see [12.00F](#)):
1. Understand, remember, or apply information (see [12.00E1](#)).
 2. Interact with others (see [12.00E2](#)).
 3. Concentrate, persist, or maintain pace (see [12.00E3](#)).
 4. Adapt or manage oneself (see [12.00E4](#)).

OR

- C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
- 1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see [12.00G2b](#)); and**
 - 2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see [12.00G2c](#)).**



12.03 Schizophrenia spectrum and other psychotic disorders (see [12.00B2](#)), satisfied by A and B, or A and C:

- A. Medical documentation of one or more of the following:
- 1. Delusions or hallucinations;**
 - 2. Disorganized thinking (speech); or**
 - 3. Grossly disorganized behavior or catatonia.**

How do these symptoms impact areas of your life?

AND

- B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see [12.00F](#)):
1. Understand, remember, or apply information (see [12.00E1](#)).
 2. Interact with others (see [12.00E2](#)).
 3. Concentrate, persist, or maintain pace (see [12.00E3](#)).
 4. Adapt or manage oneself (see [12.00E4](#)).

OR

- C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
- 1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see [12.00G2b](#)); and**
 - 2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see [12.00G2c](#)).**



TIPS FOR TESTIFYING AT YOUR SOCIAL SECURITY HEARING

Arrive Early

Unless your representative asks you to be at the hearing office at a specific time, arrive for your hearing about a half an hour early. Any earlier is not necessary no matter what your Notice of Hearing may say about coming early to review your file. Your representative has already reviewed your hearing exhibit file. It isn't necessary for you to review it (although you may if you want to). Disability hearings usually start on time--so *whatever you do, don't be late.*

Don't Talk About Your Case

When you come for your hearing, remember, social security hearings are serious business. Don't make jokes. Indeed, don't even talk about your case before or after your hearing in the waiting room, in the hallway, in the elevator or anywhere else where a stranger can overhear. A social security employee may misinterpret what you say and get the wrong impression about you. There will be a lot of social security employees in the building.

The Hearing Room

A social security hearing room is nothing more than a small conference room. It may have a few official trappings such as the seal of the Social Security Administration or an American flag. Hearing rooms are always equipped with a conference table. Hearing rooms often have a desk for the judge that sits on a small riser so it's slightly above the level of the conference table where you will sit.

The Digital Recording

The most important equipment in a hearing room is the recorder. Because your hearing will be recorded, it is important for you to speak clearly when you answer questions. The microphones are very sensitive so that they will pick up your testimony from anywhere in the room if you speak loud enough for the judge to hear you. However, shaking your head won't do. Neither will pointing at a part of your body without stating out loud what part of your body you are pointing at. Also, "uh huh" and "huh uh" answers do not transcribe as well as yes and no answers. So try to say "yes" and "no" if you can.

Persons Present in the Hearing Room

You will be seated at the conference table along with your representative. Also seated at the conference table will be the judge's assistant who operates the digital recording. Under some circumstances the judge may call a vocational witness or a doctor to testify. If so, they will be seated at the conference table, too.

You are allowed to bring observers into the hearing room. But the hearing is private. Anyone present other than the judge, the judge's staff and witnesses called by the judge must have your permission.

Social Security Hearings are Informal

Social Security hearings are much less formal than court hearings. Social Security hearings were designed so that they would not be a threatening experience. The Social Security Administration (SSA) recognizes that if you can relax as much as possible you will be the best witness for yourself. It's okay to let yourself be yourself.

Although this is an informal hearing, there are a couple of procedures that are necessary to follow. First, you and all witnesses will testify under oath. Second, it is important when you are testifying that you not ask anyone else in the room to help you answer questions and that your witnesses or friends do not chime in to help you testify. Only one person is allowed to testify at a time.

The Administrative Law Judge

The person who presides in a social security hearing is an administrative law judge (ALJ). Although many judges do not wear judicial robes and you will not be expected to stand up when the judge comes into the room, the social security judge is entitled to the same sort of respect that you would pay to a court judge.

The judge's job is to issue an independent decision, which is not influenced by the fact that your case was denied at the time of your initial application and on reconsideration. In fact, judges do issue independent decisions, with more than half of their decisions nationwide being in favor of the claimant. These are the best odds of winning at any step in the entire social security appeals system.

The informal social security hearing is not what we call an "adversarial" hearing. That is, there is no representative on the other side who is going to cross-examine you. Judges usually do not "cross-examine" a claimant. The judge is not your adversary. The judge is not your opponent. The judge's job is to find out the facts.

Many people, by the time they get to a hearing before an Administrative Law Judge, are angry at the social security system. Their applications for benefits have been denied twice, often without any logical reason given for the denial. This system is cumbersome. It is time-consuming with all of its appeals, and frustrating.

But, it is important not to take your anger out on the judge. The judge did not create this system. The judge is not responsible for the problems that you have had with the system. Since the judge probably already knows all of the problems with the social security appeals system, you do not need to explain these problems. It also isn't helpful to ask the judge any questions about your case. For example, don't ask, "Why have I been denied?" "Why is it taking me so long to have a hearing?" and so forth. It is best to focus on the facts of your case, to give the judge the best possible reasons to find you disabled.

The only time you should ask the judge a question is when you do not understand what is being asked of you. Judges and representatives sometimes ask simple questions in complicated ways. This is a shortcoming of the legal profession. Don't be intimidated by it. If you're not sure you understand a question, don't be embarrassed to ask politely for an explanation.

The best way to treat the judge is with the courtesy and candor that you would show an old friend whom you haven't seen for several years that you want to bring up to date about all of your problems. In other words, it's okay for you to talk to the judge "regular." You do not have to use highfalutin words, representative words or doctor words. You do not have to use any special medical or legal words. In fact, it's much better if you don't try to use such terminology. Just talk to the judge the same way you would talk to an old friend.

Look the Judge in the eye: Judges believe that if you cannot look him in the eye, you can't be telling the truth. More importantly, I want you watching him very closely to see if it appears he truly understands your problems. If you think he does, you can start cutting back on your answers. You don't need to say the same thing over and over. There is such a thing as "beating a dead horse" or "trying too hard." If you don't think you went far enough in your explanations, I'll pick back upon those points and we'll discuss them further when I'm asking you questions.

The Order in Which Things Happen at the Hearing

Judges usually begin disability hearings by reciting the "case history" of your case and stating the issues to be decided. Judges often state what you have to prove in

your case -- but judges seldom give a clear and simple explanation. They usually say that in order to be found disabled you must be "unable to perform substantial gainful activity which exists in significant numbers in the economy, considering your age, education and work experience." When they say it, it almost sounds like you've got to be bedridden to get disability benefits -- but, as will be explained in more detail later, this isn't true.

The judge may question you first. And when the judge is done, the judge will give your representative a chance to ask you some questions. Occasionally, if a claimant is well prepared to testify, the representative doesn't have to ask any questions at all.

Some judges, however, expect representatives to handle most of the questioning. If so, answer questions asked by your representative the same way you'd answer them if a stranger were the one asking the questions. Sometimes a claimant may give less than complete answers when his or her representative asks questions, because the representative knows a lot about the case already. So, it is important to keep in mind that the judge, who will decide your case, doesn't know the answers until you say them. Although the judge probably will read your file before the hearing, when you're testifying, it is best to assume that the judge knows nothing about your case. Plan on explaining *everything*.

When you're done testifying, your representative will be allowed to question any witnesses you've brought to the hearing. After that any doctor or vocational expert called by the judge will testify.

At the end of the hearing some judges will ask you if you have anything more to say. It's best if you don't try to argue your case at this point -- let your representative do that. Most judges will give a representative the opportunity to make a closing argument either at the end of the hearing or to be submitted in writing.

Most judges won't tell you if you've won, although a few will. Even if you're told you've won, the judge still must write a decision, which will be mailed to you with a copy to your representative. Sometimes it takes quite a while for the decision to come out.

What to Wear

A lot of people ask what to wear, whether they should dress up. You do not need to dress up. You do not need to wear the same clothes that you would wear to a wedding. This is an informal hearing. You may wear whatever makes you comfortable. We would advise you not to wear clothing with tears or baseball caps, etc.

minutes, that would be another story! I'd rather not hear the word "can't" come out of your mouth at the hearing.

I dare say there is very little you outright cannot do. Instead, I'd rather hear you say you are able to do [whatever it is you're being asked about] but use the question as an opportunity to explain how it makes you feel and the limits you have in doing that activity because of how you feel. The judge starts to get the picture of a person who does not give up. He gets the picture of someone who is willing to be very straightforward and candid with him about the activities you are able to accomplish.

Finally, please look at that answer ("Nothing") one more time. It is ONE word long. How can we expect the Judge to really get to know you if you only speak a single word every now and then?

The most important thing about a social security hearing is not what you wear. It is what you say. It is whether or not you are telling the truth.

When the judge asks a question, don't try to figure out why the judge is asking that particular question or whether your answer will help or hurt your case. Be candid about your strengths as well as about your limitations. The best way to lose a good case is for the judge to think that you're not telling the truth. So, testify truthfully.

And, don't do any play-acting for the judge. That is, don't pretend to cry or be in more pain than you are. On the other hand, you need not suffer silently or minimize your problems when you tell the judge how you feel. If you need to take a break from the hearing, ask the judge for permission. If you are uncomfortable sitting and it would help to stand up for a while, you may do so and you should not be embarrassed about it.

Tell Your Story

This will be your chance to tell the judge everything you want the judge to know about why your condition prevents you from holding a job.

Many people think that since they are dealing with the government, they should keep their mouth shut, give the shortest possible answer and not volunteer anything. Although this is usually a good approach when the government is trying to do something *to* you, the opposite is true when you are asking the government to do something *for* you. You need to provide enough facts, details, and explanation in your testimony to make it obvious to the judge that you are disabled.

Approximating Dates

Testify Truthfully

This probably goes without saying. I know you would not purposefully lie. But I also know that most people do, unintentionally, not tell the exact truth. Here are some examples you need to remember:

If you don't know the answer, admit it! It's okay to say, "I don't know". If that's the truth, then tell the truth. If you don't tell the truth, you're likely to get in trouble.

If you don't remember, admit it! It's okay to say, "I don't remember". If that's the truth, then tell the truth. If you don't tell the truth, you're likely to get in trouble.

If you don't understand the question, admit it! It's okay to say, "I don't understand [that word] or that question". If that's the truth, then tell the truth. If you don't tell the truth, you're likely to get in trouble.

Try VERY hard to be fair with your answers: This may be another way of saying, "Don't make it sound any better or any worse than it really is.

My favorite example of this is when someone asks, "How are you?" and the person responds, "I'm fine". Sometimes, too, people want to try to keep a positive attitude so they tend to minimize their problems. That's fine for the sake of keeping their hopes up or saving their pride but it doesn't help the judge know the true extent of the problems and limits they have. On the other side of the coin, sometimes people make things sound worse than they really are. My favorite example of this is when someone asks, "What do you do during the day?" or "How much can you lift?" and the person responds, "Nothing". The judge's reaction to that would be, "Well, you lifted that shoe you're wearing didn't you?" That's more than "nothing". I know that sounds picky but the judges are entitled to be picky if they want to be. While I don't think the Judge is that picky, I don't think we should give any excuse for him to get picky, either.

It's okay to tell the judge you are able to do certain things. I think judges get very tired of people who deny they can do anything at all. Each question being met with a flat denial, "No, I can't do that." I think judges are much more impressed with people who are willing to admit they can do certain things as long as you also explain the limits that go with it. As an example, I don't care if you tell the judge you walk five miles each day—as long as it's true. At the same time, if it takes you five hours to do that and you would need to rest every ten

If you are asked when something happened, if possible, the judge would appreciate having the precise date. But if you don't remember the exact date, don't worry. Few people can remember precise dates for events in their lives. If you don't remember the exact date, say so. Then, do your best to give an approximate date, or a month and year, or a season and year, or, if you cannot remember more accurately, just the year. Getting dates wrong is something that all of us, including the judge, do from time to time. Some people are worse than others with dates. The judge won't think you're being untruthful if it turns out that a date is wrong.

How the Judge Determines Disability

It is important that you understand some basic points about how the administrative law judge goes about determining whether someone is disabled. This process is complicated and technical, and it doesn't necessarily involve common sense. For example, most people think that if they cannot get a job because of their medical problems, this must prove that they are disabled. But, as we shall see, inability to get a job proves nothing.

Disability determination is what we call a "hypothetical" determination. It has very little to do with the real world. It has nothing to do with the fact that employers won't hire you because of your medical problems. The Social Security Administration looks only at whether you are *capable* of doing jobs, not whether you'd be hired. Thus, you may have to prove that you are unable to do jobs that you would never be hired for in a million years.

In some cases, the medical findings about your condition alone will cause the judge to find you disabled. In other cases, the majority of cases, we usually have to prove two things. First, we have to prove that your medical impairments prevent you from performing any job you've done in the past fifteen years. Second, we have to prove that there aren't very many other jobs you are capable of doing considering your age, education and work experience.

Think about all the jobs you've had in the past 15 years, and pick out the easiest one. We have to prove that you cannot do that easiest job -- we have to prove this even if we're dead certain you'd never be hired for that job again; and we have to prove it even if the company where you worked no longer exists or if the job is not available for some other reason.

Proving the second thing -- that considering your age, education and work experience you're unable to do very many other jobs -- is even more complicated and opposed to common sense. In many cases we have to prove that you're incapable of doing jobs that we know

you'd never actually be hired for.

But we don't need to make proof of disability more difficult than it really is. A lot of people have heard the language "totally and permanently disabled." This phrase, which comes from worker's compensation cases, does not apply in social security disability and SSI disability cases.

First, for social security, you don't have to be "permanently" disabled. You only have to be disabled for 12 months.

Second, although you have to be totally disabled in the sense that you are unable to perform jobs existing in significant numbers in the economy, this doesn't mean that you have to be unable to do anything. In fact, very few people who go in front of an Administrative Law Judge are unable to do anything at all.

Everyone Can Do Something

One way to determine disability is to start by trying to figure out what you *can* do. Once we figure that out, we can determine whether or not jobs within your capacity exist in significant numbers in the economy, considering your age, education and work experience. We do that either by looking at a fairly complicated set of rules or, in some complicated cases, we can ask some questions of a vocational expert.

Rules for Determining Disability

The rules that we use for determining disability apply most directly to impairments that limit your physical ability to stand or sit or walk or lift or bend or work with your hands. Mental impairments are a bit more complicated.

If you are unable to do certain kinds of manual labor, whether because of a back problem or a heart condition or breathing problem or some other medical problem, your representative will be able to look at the rules and figure out just what you've got to prove. Here are some examples.

If you are under age 50, the general rule is that you've got to prove that you can't do a desk job. You've got to prove this even though you probably would never be hired for a desk job.

If you are age 50 through 54, the general rule is that you have to prove that you cannot do light work, that is, work involving being on your feet most of the day and lifting up to about 20 pounds. Thus, even though you might still be able to do a sit-down job, a desk job, you can still be found disabled.

If you are age 55 or older, it gets even easier. The general rule is that you have to prove that you cannot do "medium" work, that is, work involving being on your feet for most of the day, frequently lifting 25 pounds, occasionally up to 50 pounds. Thus, you can even be capable of doing light work and still be found disabled.

As you can see, we're not only going to prove what you can't do, we're also going to prove what you *can* do. We're going to do that because it's the truth and because in most cases the judges just won't accept any sort of "I can't do anything" explanation for why you're disabled.

These issues can get complicated when you've had jobs in the past where you've learned a lot of skills. The judge is going to want to know about your work skills. You are going to have to be able to explain them to the judge.

How do we go about proving all of this? We do it through your testimony in response to questions from the judge or your representative at the hearing. Although your representative will remind you if you forget something, it's best if you can answer all questions thoroughly so that it does not look like your representative is prodding you or putting words in your mouth.

Areas of Testimony

Questions are going to be asked of you at the hearing about your:

1. Work history
2. Education
3. Medical history
4. Symptoms
5. Your estimate of your work limitations
6. Your daily activities.

Work and Educational History

For work history, you will be asked to describe job duties on your last job and on all significant jobs you've had during the past fifteen years. The judge will want to know how much weight you had to lift on each job and about how much time during the workday that you spent sitting, standing and walking on each job. And the judge will be interested in difficulties you had performing past jobs because of your health and why you left each former job, especially your last job.

The judge will also ask about job skills. If you have had semi-skilled or skilled work, it is important that you describe your skills accurately. Remember, though, this hearing is not like a job interview in which people often

have a tendency to try to puff up their job skills. Guard against any such tendency.

One test for determining the degree of skill involved in a job is how long it takes to learn to do that job. Be prepared to estimate how long it would take for an average person to learn to do your past jobs.

For education, you'll be asked the highest grade you completed in school, whether you had any training in the military, whether you have had any formal vocational training or on-the-job training.

There usually are few problems in explaining work and educational history. If you have difficulty explaining why you can't now perform one of the jobs that you have done in the past 15 years, you'll want to go over this with your representative before your hearing. If you have recently completed some schooling that might qualify you for a skilled job, be sure your representative knows all about this schooling.

Medical History

Sometimes there are no questions whatsoever about your medical history. The judge will have your medical records from doctors, hospitals and others who have treated you and may let the medical records speak for themselves. It is your representative's job to see to it that all of the medical records the judge needs to see are in the hearing exhibit file and, when necessary, that there are letters from your doctors explaining your medical condition and their opinions about your limitations.

The judge may ask a few general questions about your medical history. The judge may want to know how often you see your doctor, what sort of treatment your doctor provides, what medications you are taking, how often you take them and whether there are any side effects. You may be asked to describe the symptoms and treatment of your medical condition since it began, what doctors you have seen, where and when you were hospitalized, and so forth.

But since the judge has records from your doctors, you will not be expected to be able to explain technical medical things to the judge. Unless you are asked, it's better not even to try to explain what your doctor has told you or what your friends have told you or what you have read about your medical problem unless you have first cleared it with your representative. However, if the judge **asks** you what your doctor has told you about your condition or your limitations, do your very best to quote your doctor as accurately as possible.

Symptoms

Symptoms are how you feel. No one knows how you feel better than you. You know where you hurt, and when you hurt. You know when you get short of breath or dizzy or fatigued. So it's up to you to describe those symptoms to the judge in as much detail and as vividly as possible. After all, it's these symptoms that keep you from working. It's not because you have some particular label of disease like arthritis or a heart condition or a lung condition that you are unable to work. You cannot work because of how you feel.

So if the judge says to you, "Why can't you work?" Don't say, "It's because I have arthritis," etc. Lots of people who can and do work have the same impairment. So telling the judge the name of your health problem really tells the judge nothing. What the judge needs to know is the severity of your pain and other symptoms.

Be specific when you describe your symptoms. Don't just say, "It hurts." Describe what your symptoms feel like, the same way you have probably described your symptoms to members of your family. Describe the nature, intensity, and location of pain, whether it travels to different parts of your body, how often you have pain, and how long it lasts. Explain if you feel different from day to day. Explain what starts up your pain or other symptoms, what makes your symptoms worse and what helps relieve them.

Describe your symptoms to the judge the very best you can. Be precise and truthful. Don't exaggerate, but don't minimize your symptoms either.

If you exaggerate your symptoms in your testimony, if you testify about constant excruciating pain but the medical records don't back up what you say, the judge will not believe you. The judge is also going to wonder how you made it to the hearing if your pain is so bad. So be careful when you use words such as "extreme" or "excruciating" to describe pain; and don't say that you "always" or "constantly" hurt or that you "never" get any relief from pain if what you mean is something less.

On the other hand, if you minimize your symptoms by saying they're not so bad, and a lot of people do, the judge is not going to find you disabled because you will convince the judge that you have few limitations. This is not the time to be brave.

So try not to be a minimizer or an exaggerator. Try to describe your symptoms exactly like they are.

Estimate How Often You Have Pain or Other Symptoms

If your symptoms come and go, be prepared to explain how often this happens. Some people don't give

enough information, especially when the frequency of symptoms varies a lot. It is never a good answer to say that something happens "sometimes" or "occasionally" or "once in a while." The judge won't know if you have the problem once a day, once a week or once a year. The judge could conclude that this means that your symptoms occur only a few times per year -- which is not enough to be disabling. When the frequency of symptoms varies greatly, a lot of explanation and examples are necessary. For example, tell how often symptoms occur in a *usual* week. If you have weeks with no symptoms, estimate how many weeks out of a year are like that. The more information you give about how often you have symptoms, the better understanding the judge will have about why your symptoms keep you from working.

Estimate How Long Your Pain or Other Symptoms Last

For symptoms that come and go, be prepared to explain how long they last. Try to explain this without using the word "sometimes." Use the word "usually," then estimate how often the symptoms last longer and how often the symptoms are shorter.

Estimate the Intensity of Your Symptoms

You may be asked if your pain and other symptoms vary in intensity. If so, do your best to describe how your pain and other symptoms vary in intensity during a usual day or over a usual week. Often it is best to use the 1 to 10 scale sometimes used by therapists and doctors. On this scale 1 is essentially no pain and 10 is the worst pain you've ever had. Be sure you understand this scale and use it correctly without exaggerating. Think about the worst pain you ever had. Did it cause you to go to the emergency room? Did you lie in your bed writhing in pain, finding it difficult to get up even to go to the bathroom? Did it cause you to roll up into a fetal position? These are the images that the judge will have about what it means to have pain at a 10 level. Some people with disability claims have pain that gets to this level once in a while. Most do not. People who testify that their pain is frequently at the 10 level do not understand the scale. Most judges will conclude that someone who testifies that his or her pain is at a 10 level during a hearing is not to be believed -- because judges think there is no way a person could be at a hearing with pain that bad.

Estimate of Limitations

The judge will ask you how far you can walk, how much you can lift, how long you can stand, how long you can sit, etc. You must give the judge a genuine estimate of what you can do. So it is important to think about these

things before your hearing.

If a friend asks you how far you can walk, you probably start thinking of places you have walked recently, how you felt when you got there, whether you had to stop and rest along the way, and so forth. You are likely to answer your friend's question by giving one or more examples of walking someplace recently. If the judge asks this question, answer it the same way. Talk to the judge the same way that you would talk to an old friend.

A social security hearing is not a court hearing. If you are familiar with court hearings or have watched representative shows on television, wipe such things from your mind. In court hearings, representatives are always advising people, "don't volunteer." What representatives mean, of course, is don't give any examples or details, wait for the representative to ask. In social security hearings, this rule about not volunteering does not apply and, indeed, if you don't "volunteer" information, you will not be giving the judge as much information as the judge needs in order to decide your case.

Let's look at some examples. You decide which testimony is best. The person who has been advised by a representative not to volunteer in answering a question may answer this way:

Judge: *How far can you walk?*

Claimant: *Two blocks.*

A person who talks to a judge the same way he talks to a friend, as we're advising you to do, will answer the question this way:

Judge: *How far can you walk?*

Claimant:

Judge, I can't walk more than about 2 blocks without stopping to rest. Just yesterday, I went to the store, which is only about a block and a half from my house. By the time I got there, my back felt like it had a hot spike driven into it. I started limping. All I bought at the store was a loaf of bread. I could barely carry it home. On the way home, I had to stop three times because my back hurt so much. When I got home I sat down in my recliner chair and put my legs up before I even put the bread away.

As you can see, the person who talks to the judge as an old friend provides a lot of important information, some good examples and some relevant details.

Also, be aware that there is a built in ambiguity in a judge's question concerning how long you can stand, how much you can lift, how far you can walk, and so forth. Judges always ask the question just that way:

"How long can you stand?" The question should *not* be interpreted to mean, "How long can you stand before you are in so much pain that you must go home and go to bed?" What the judge needs to know, of course, is how long you can stand in a work situation where you must stand for a while, are allowed to sit down, and then must stand again.

Many times it is best to answer the question more than one way. You might give the judge an example of overdoing it and having to go lie down. But if you give the judge that example, be sure to fully explain it. Be sure to explain that, for example, when you washed Thanksgiving dinner dishes for an hour, you had to go lie down for a half an hour. Otherwise, it will show up in the judge's decision that you have the capacity to stand for one hour at a time, when your true capacity in a work situation is much less. But also give other examples that demonstrate the work situation: for example, if you are going to stand for a period of time, then sit, then stand again, this second standing time may be much shorter.

The problem that we have with the way these questions are asked is even worse when the question comes to sitting. This sort of exchange happens all the time:

Judge: How long can you sit?

Claimant: Twenty minutes.

When the judge hears this answer, the judge looks at a clock and writes down that the claimant had been sitting there for forty minutes when that question was answered. Thus, the judge concludes that this claimant is a liar.

What this claimant meant, of course, is that he could sit for 20 minutes in a work situation, then stand or walk for a while and return to sitting. In all likelihood, a claimant with a sitting problem, after forcing himself to sit through an hour-long social security hearing will go home and lie down for a long time in order to relieve the pain in his back. He answered the question truthfully. He can sit for only about 20 minutes in a work situation. If he forces himself, he can sit longer but then it takes some time to recuperate. It is important to explain all this to the judge so that the judge can understand what you are able to do day in and day out in a work situation.

Here is an example of a good answer to a question about sitting:

Judge: *How long can you sit?*

Claimant: *If I force myself, I can sit here for*

perhaps a whole hour; but after this I'll have to go home and lie down and I won't be much good for the rest of the day. When I am trying to do things around the house, like pay bills, I only sit for about 20 minutes at a time and then I get up and walk around for 15 or 20 minutes before I go back to sitting. If I were on a job where I could change positions between sitting and standing or walking, the length of time that I could sit would get shorter as the day wore on. Sitting is really hard on my back. It's better, though, if I can sit in my recliner chair with my legs up. I can sit in that chair for a long time but I find it really hard, for example, to pay bills sitting in that chair. I usually sit at the dining room table when I pay bills.

Another problem comes up when you have good days and bad days. For example, on good days, you might be able to sit or stand or walk for much longer than you can on a bad day. If you have good days and bad days, describe what it's like on a good day and what it's like on a bad day. Be prepared, though, for the judge to ask you for your estimate of how many days out of a month are good days and how many days are bad days. A lot of people answer such questions as, "well, I never counted them." Count them. The judge will need this information.

To give good testimony about your limitations, it is really important for you to know yourself, know your limitations, and neither exaggerate nor minimize them. This is hard to do. You will need to think about it, perhaps discuss your limitations with family members and definitely discuss these limitations with your representative before the hearing.

Mental Limitations

This memorandum is not intended to help prepare people to testify who have *only* mental limitations, since the issues in such cases are different in many ways from those we have been discussing; and it is difficult to make general statements about how to prepare for such cases. If your case involves only mental limitations, you and your representative will need to go through these matters before the hearing. For those with mental limitations in combination with physical impairments, it is also necessary to discuss the mental limitations with your representative prior to your hearing; but there are a few things that we can say here about mental limitations in combination with physical impairments.

Many people who have serious physical problems, especially if they have been having pain for a long time, develop emotional aspects to their physical impairments. This is so common that it is surprising to find someone with a long-term physical problem who doesn't also have some emotional problem. But, many people who suffer

physical impairments are afraid to talk about this emotional component of pain for fear they will be viewed as crazy. Having such problems doesn't mean you're crazy. It probably means you're normal.

It is important that you be willing and able to describe any emotional problems because it is often the emotional aspect of pain that interferes the greatest with the ability to work. Common problems include:

- difficulty concentrating,
- forgetfulness,
- nervousness,
- a quick temper,
- difficulty getting along with others,
- avoiding other people
- crying spells, and
- depression.

If you have some of these problems, you may be asked about your ability to understand, carry out and remember instructions, to make judgments, to respond to supervisors, co-workers and usual work situations and how well you deal with changes in a routine work setting. You may be asked how well you deal with stress, which, you must remember, is a very individual thing. Different people find different things stressful. If the judge asks you about how well you deal with stress, as part of your answer be sure to tell the judge what sorts of things *you* find stressful, especially things at work.

Sometimes claimants have trouble putting their fingers on exactly what it is about work that they find stressful. For this reason we're providing a list of examples of things some people find stressful in work:

- meeting deadlines,
- completing job tasks,
- working with others,
- dealing with the public,
- working quickly,
- trying to work with precision,
- doing complex tasks,
- making decisions,
- working within a schedule,
- dealing with supervisors,
- being criticized by supervisors,
- simply knowing that work is supervised,
- the monotony of routine,
- getting to work regularly,
- remaining at work for a full day,
- fear of failure at work.

Sometimes people find routine, repetitive work stressful because of the monotony of routine, no opportunity for

learning new things, little latitude for decision-making, lack of collaboration on the job, underutilization of skills, or the lack of meaningfulness of work. Think about whether you find any of these things particularly stressful. If so, discuss them with your representative.

Daily Activities

Judges always ask about daily activities. They ask how you spend a usual day. They use your description to figure out whether or not your daily activities are consistent with the symptoms and limitations you describe. For example, if you claim to have trouble standing and walking because of severe pain in your legs but you testify that you go out dancing every night, the judge is going to have some reason to doubt your testimony about your symptoms and limitations.

The judge's questioning about your daily activities provides you with a golden opportunity to help your case by giving a lot of details. Let me give you some examples of what happens if you don't give details:

Judge: *What do you do on a usual day?*

Claimant: *Nothing.*

This is not a good answer. Sitting staring at a television set is doing something. Sitting staring out the window is doing something. Sitting staring at a blank wall or at the ceiling is doing something. So describe to the judge what you do -- but don't do it this way. Here's another bad example:

Judge: What do you do on a usual day?

Claimant: Oh, I do some cleaning, cooking, straightening up the house, sometimes some laundry and going to the store.

This is a truthful answer since this person does all of these things; but it doesn't help his case at all. He has left out all of the important details. He failed to mention the fact that he does cleaning for only a few minutes at a time; he cooks only simple meals because he can't stand in the kitchen long enough to do anything more elaborate; he has help doing the laundry; and he never goes to the store alone; he always takes along his 15 year old son to carry the groceries. In other words, the brief description of the things that he did during the day does not support his testimony about disability. But, the *details* about how he goes about doing these things do help his case.

To help the judge live your day with you, run through your usual day hour by hour. Emphasize those things that you do differently now because of your health

problems. If you stop and think about it, you'll probably be able to come up with a long list of things you do differently now than you did before you became disabled. These things are important because they show how your disability has affected your life in major and minor ways.

Describe how long you are active doing things and how long you rest afterwards. Tell where you rest, whether it's sitting or lying down, whether it's on the couch or the bed or a recliner chair. Tell how long it takes you to do a project now compared to how long it used to take you. Describe all those things that you need help from other people doing -- and tell who those others are and what help they provide.

The more specifics that you can provide, the easier it is for the judge to understand your testimony about your symptoms and your limitations.

Some Things Not To Do

1. **Don't argue your case.** Your job is to testify to facts, describe your symptoms, give estimates of your limitations, outline your daily activities, and provide lots of examples of your problems. Leave arguing your case to your representative. For example, don't use the line that starts "I worked all my life..." or don't say, "I know I can't work."

2. **Don't try to draw conclusions for the judge.** Let the judge draw his or her own conclusions. Don't say things such as, "If I could work, I would be working." Or "I want to work." If you say this, it may cause the judge to think about Stephen Hawking who is in a wheelchair and unable to speak but is the world's leading expert on theoretical physics. There are many exceptional people with extreme disabilities who work; but it is never the issue in a social security disability case that there are others who work. It is also not relevant that there may be people less disabled than you who receive disability benefits.

3. **Don't compare yourself to others.** Popular lines are:
"I know a guy who has nothing wrong with him but *he* gets disability benefits."
"I know people less disabled than me who get disability benefits."
"If I were an alcoholic you'd give me disability benefits."
None of these comparisons helps your case.

4. **Don't try to play on the judge's sympathy.** It won't help. It might backfire. Judges have heard it all. Your financial situation, the fact that the bank is going to foreclose on your house and so forth are not relevant.

5. **Don't try to demonstrate what a "good" person you are.** Benefits are not awarded to the virtuous. They are awarded to the disabled. Some claimants, perhaps influenced by the rhetoric of politicians, bring up extraneous matters to demonstrate their virtue, thinking that this will influence the judge. Don't do it. This is just like trying to play on the judge's sympathy. It doesn't work. It may backfire.

6. **Don't engage in dramatics.** You are supposed to tell the truth at your hearing. If you are putting on a show for the judge, that is the same thing as not telling the truth. At the same time, however, if you are having a genuine problem at the hearing and you need to stop the hearing for any reason, tell the judge and your representative.

7. **Don't give irrelevant testimony.** Social security regulations contain a list of irrelevant areas of testimony -- areas that the judge can't and won't consider in deciding your case. This list is in the regulations:

- (a) The fact that you are unable to get work is irrelevant.
- (b) The lack of work in your local area is irrelevant.
- (c) Hiring practices of employers are irrelevant.
- (d) Technological changes in the industry in which you have worked are irrelevant. (Although there are questions about this one.)
- (e) Cyclical economic conditions are irrelevant.
- (f) The fact that there are no job openings is irrelevant.
- (g) The fact that you would not actually be hired for a job is irrelevant.
- (h) The fact that you do not wish to work at a particular job is irrelevant.

Also, it doesn't matter that a particular job doesn't pay well enough to support your family.

Problem Areas

There are three areas where there could be potential problems. So if any of these three things apply to your case, be sure to bring them to the attention of your representative *before* the hearing.

1. Think back over the fifteen years before you became disabled. Pick out your easiest job. If you have trouble explaining why you can't now do that easiest job, even if that job no longer exists, be sure to discuss this with your representative.
2. If you got unemployment compensation at any time during the period that you are claiming to be disabled, make sure your representative knows about it before the hearing.
3. If you have been looking for work during any

period that you claim to be disabled, tell your representative about it before the hearing.

Things To Do

Here's a list of things to do at your hearing:

1. **Tell the truth.**
2. **Neither exaggerate nor minimize your symptoms.**
3. **Know your present abilities and limitations.**
4. **Provide relevant details and concrete examples but don't ramble on.**

What Your Representative Does

Your hearing will be over in an hour or an hour and a half or so. Seldom do hearings take more than two hours. If you're well prepared because of this memorandum and your meeting with your representative before your hearing, your representative may not have to ask many questions at the hearing. In hearings with judges who like to ask most of the questions, it's only where issues are not developed or your representative thinks that your testimony wasn't clear enough that your representative needs to ask you some questions at your hearing. In fact, it's better that way. The more that comes from you in answer to the judge's questions, the better it is for your case. Your case will be presented naturally. Your testimony will flow freely. The judge will get to know you and your situation as you and the judge talk. And the judge won't think that it's your representative testifying rather than you. Your representative will, however, ask questions of any witnesses you bring along to the hearing; and it is the representative's job to question any expert witnesses called by the judge.

The most important part of what your representative does usually takes place outside of the hearing. That is, your representative gathers medical evidence, gets reports from doctors, does legal and medical research, prepares witness to testify and your representative may make a closing argument either in writing or at the hearing. The best-developed cases, though, don't need a closing argument. If a case is so well developed with medical evidence and with the claimant's testimony, by the time it comes to argue the case, it is like stating the obvious -- so why bother? But this doesn't mean that there hasn't been a lot of work that has gone into making a case so clear.

There is one thing that we representatives cannot do, however. We're powerless to speed up the system. There may be a delay in getting the written decision. The written decision will be mailed to you with a copy to your representative. Sometimes, written decisions come out fairly quickly. Fairly quickly for a hearing decision is about a month. It is not uncommon for it to take three

months or even much longer for a hearing decision to be mailed to you.

There is seldom any way to speed up getting a decision out. So, as hard as it is, you must grit your teeth and wait. If more than three months pass, it's a good idea to make sure that your file hasn't been lost; and your representative can do that. But your representative can't do much more to speed things up.

Representative Fees

If your case involves social security disability benefits only, there is no problem with representative fees. If your fee agreement with your representative calls for the representative fee to be 25 percent of back benefits up to a maximum amount set by the Commissioner of Social Security (currently \$6,000), the Social Security Administration will withhold the representative fee and, assuming neither you nor the judge objects to the fee, SSA will send that money to your representative. Although it's your money, you're not involved in paying it. But you will have to pay expenses directly to your representative if your fee agreement calls for you to reimburse your representative for expenses.

Whenever there is any SSI involved in a case, however, things get more complicated. The Social Security Administration does not withhold any portion of the SSI back benefits for direct payment to your representative. Therefore, you will have to pay your representative out of your SSI benefits. Depending on your fee agreement with your representative, you'll have to pay your representative out of your SSI check whether yours is only an SSI case or a case involving both social security disability and SSI benefits. And if your SSI check is sent to a welfare department, you'll have to pay your representative out of the money you get back from the welfare department.

When You Get Your Decision

When your decision arrives, make sure that your representative received a copy. Your copy and your representative's copy of the decision are supposed to be sent to each of you on the same day. It happens every once in a while that, because of a hearing office mistake, your representative may not be sent a copy of the decision. When this happens, your representative doesn't know what is going on in your case. Your representative won't know, for example, whether the favorable decision contains an error that needs to be corrected right away. Your representative won't be able to monitor payment of your benefit. Your representative won't know if you receive a denial decision that needs to be appealed. So, win or lose, call your representative's office when you get a decision to find out if your

representative received a copy.

If You Lose

Sometimes good cases, well presented cases, are lost. It is hard to figure out why, but it happens. There are usually some possibilities for appeal. If you lose, be sure to consult right away with your representative about appealing your case. Do this as soon as possible. It is absolutely essential that you appeal to the Appeals Council within 60 days of the judge's decision or you will lose your right to appeal.