

by Scott E. Davis

Scott E. Davis is a Social Security and Long-Term Disability insurance attorney in Scottsdale, Arizona. The majority of his disability practice is devoted to representing individuals with fibromyalgia (FM) and/or the Chronic Fatigue Syndrome/Chronic Fatigue and Immune Dysfunction Syndrome/Myalgic Encephalopathy (CFS/CFIDS/ME). Scott has extensive experience in handling FM/CFIDS cases and does represent individuals throughout the United States. In most cases he charges a fee only if his client obtains benefits.

Anyone who has gone to battle with the Social Security Administration in an attempt to obtain disability benefits knows how frustrating that exercise can be. Those individuals with a primary diagnosis of Chronic Fatigue and Immune Dysfunction Syndrome (CFIDS), have been especially exasperated due to the arbitrary nature and lack of uniformity of decision making by the Administration. Take heart, help has arrived!

Like the cavalry charging over the hill, Social Security Ruling SSR 99-2p can help save the day. Or, if the claim was not prepared for battle from its inception, can seal its fate.

On April 30, 1999, the Social Security Administration published *Social Security Ruling 99-2p: Title II and XVI: Evaluating Cases Involving Chronic Fatigue Syndrome*. This new ruling "ensures that all adjudicators will use the same policies and procedures in evaluating disability claims involving CFS, and provides a consolidated statement of these policies and procedures."

The Ruling has removed the discretionary and capricious decision making that had been the modus operandi of the Administration when dealing with Chronic Fatigue. The Ruling details several examples of medical signs and laboratory findings which, for purposes of Social Security Disability, establish the existence of a medically determinable impairment "for individuals with CFS."

The same guidelines that can be used to help win a claim provides a blueprint for the Administration to deny a claim as well. Properly documenting your case, always the hallmark of

winning a Social Security Disability case, has become that much more important.

Obtaining Disability Benefits. . .David versus Goliath?

Remember the epic battle between David and Goliath? On paper, David clearly had no chance to win. Fortunately his heart and soul did not know it—and with determination, persistence and divine intervention he prevailed! Ever wonder what might have happened if he was aware of his predicament? Would he have fought or run the other way?

Every day at the Social Security Administration (SSA), seemingly epic battles between disability claimants and SSA are fought. The Bounty? Disability benefits.

The battle unfolds like this: you become unable to work due to a physical and/or mental illness and apply for disability benefits. After all, you've paid into the system all these years for this exact situation. Heck, even your doctor says you can't work. You figure it is simply a matter of completing paperwork and time until you begin receiving benefits. . .but for now you are starting to experience financial problems.

As the months go by without an answer, you reassure yourself this must be a simple case and the delay is "due to government bureaucracy." After several more months your frustration grows, you call SSA and get no answers, or worse, the ones you get are all different! The bureaucrats you spoke with were rude and put off by your phone call. You remind yourself SSA is on your side. It's job is to help people like yourself by paying disability benefits, right? But. . .you begin to feel like David.

The Big Day. . .

You finally receive an envelope from SSA, tear it open to find a benefit check and instead read: "We have Denied your claim for disability benefits as our trained staff and medical doctors have determined you are not disabled under our laws."

You're angered, frustrated, scared, intimidated and now overwhelmed by the thought of fighting Goliath. . .the Federal Government.

Pages into the decision it mentions appeal rights, but the decision seemed so final and left you with no hope. You do not know the law, the system and even if it is worth it or how to fight. You alone and defeated. . .exactly how SSA wants you to feel!

As a disability attorney I meet with clients everyday who tell me this same story. Fortunately, those clients took the bold step of appealing the denial and fighting for benefits.

What should you do. . .Persevere!

75% of all disability applicants initially will be denied benefits! Half of those denied will give up and not appeal the denial! However, 53% of the applicants who persevere to a hearing before an Administrative Law Judge obtain benefits!

Now you understand how the system works—it is designed to deny benefits to as many people as possible. SSA denies initial applications because it knows 50% of the people will give up and not appeal! But for those who persevere and appeal the denials, the majority is eventually granted benefits.

Understanding the System

1. *Initial application*—Every claim for disability benefits begins with the initial application. 75% of all applicants are denied at this step. SSA looks for a reason to deny benefits. The decision is based on forms you completed and medical records—you won't meet with anyone involved in making the decision. It is surprising when anyone wins at this step. Don't quit—you must appeal a denial within 60 days.

2. *Reconsideration*—The second step in the system, but the results are worse. 82% of all applicants are denied at this level. SSA reviews your file again and issues a denial. Unfortunately it may take months to receive. At this step, only 50% of the original applicants are still in the system, the rest gave up. Appeal the denial immediately.

Up to this point in the system you have been a Social Security number and a file.

3. *Request for Hearing before Administrative Law Judge*—Congratulations! You have persevered in the system and now have a good chance to win benefits. 53% of all claimants win at this stage!

Why? Primarily because your claim is entitled to a *de novo* or new review by a Judge who knows the law and does not work for SSA. Also, you get to testify before the Judge about your inability to work and s/he assesses your credibility. Finally, hopefully you have obtained opinions from your doctors about your inability to work.

You must win your case at the hearing stage; if you do not, you can appeal but your claim will be tied up perhaps for years with the likelihood of success dramatically reduced.

Increase your odds of Winning

Now that you have an understanding of how the system works, here are some tips on how you can maximize your chance for success.

1. *Appeal every Denial*—It bears repeating, DO NOT QUIT after receiving a denial. Now you understand you must get to a hearing. Up to that point SSA and the odds are overwhelmingly against you—receiving a denial may be cause to celebrate because you're a step closer to a hearing.

2. *Retain a Disability Attorney*—Retaining an attorney who specializes in disability law should substantially increase your odds of winning. Most claimants have no idea what they need to prove to win their case. Practically all disability attorneys work on a contingency fee—you only pay a fee if you win your case. Also, Federal law sets the maximum amount the fee can be in your case. An attorney will develop your case by obtaining the necessary medical and vocational records and opinions from your doctors that are critical in proving disability.

3. *Completing Social Security Forms*—You will complete a dizzying array of forms requesting all sorts of information. Be honest and very brief when completing forms. You won't win your

case with the information you give on the forms but you could lose it.

4. *Involve your Treating Physician*—Your treating physician is critical to success. Judges give a treating physician's opinion regarding a patient's disability tremendous weight. If your physician is not sympathetic to your claim you may want to make a change to one who is.

The purpose of this article is to convey hope that you can win your case and obtain benefits with perseverance and knowledge of the system. Please do not give up. . . appeal and keep fighting!

See the article [Disability Benefits, Fibromyalgia and CFIDS: What you don't know could be fatal to your claim!](#)