

Potholes

Potholes On The Road To Getting SSI

Tracey Cahn, Esq.

Risa Rohrberger, Esq.

ALL INFORMATION PROVIDED IN THIS PRESENTATION IS INTENDED FOR EDUCATIONAL PURPOSES
ONLY
AND SHOULD NOT BE CONSTRUED AS LEGAL ADVICE.

ALL INFORMATION PROVIDED IN THIS PRESENTATION IS INTENDED FOR EDUCATIONAL PURPOSES ONLY
AND SHOULD NOT BE CONSTRUED AS LEGAL ADVICE.

- **What do I need to do before applying for SSI benefits for my young adult?**
- **Is there any other Social Security program I should be applying for?**
- **What forms will Social Security ask us to complete?
How should we complete them?**
- **How should I address working/work experience?**
- **Appealing denials**
- **Questions**

**What do I need to do before
applying for SSI benefits for my
young adult?**

Financial Considerations

Medical/Educational/Vocational Information

Financial Considerations

(age 18 or later)

DO NOT APPLY BEFORE AGE 18

Resources/Assets

What is a countable resource?

Common resources for young adults include savings accounts, checking accounts, stocks, bonds...

The SS website has “SSI Spotlights” giving more detailed information about Resources and many other topics.

<https://www.ssa.gov/ssi/links-to-spotlights.htm>

Resources/Assets

\$2000 LIMIT

for an unmarried SSI applicant

\$2000 LIMIT

\$2000

BEFORE starting application

\$2000

WHILE Application is being processed

\$2000

AFTER SSI Is awarded

\$2000

ALWAYS-ALWAYS-ALWAYS-ALWAYS-ALWAYS

It is easy to lose track of the value of the resources.

Make this a priority!

Even having the total countable resources exceed \$2000 for one month will have consequences.

What matters:

Whose NAME is on the resource.

What does not matter:

SS does not care what you intended to do with the resource.

Beware: “secret” accounts

Inheritances (after award)

Resource Spend-Down

DO NOT just transfer money out of the account or sell assets.

Spend-down must be for items acceptable to Social Security and purchases must be *traceable*.

(Keep receipts!)

“WHAT HAPPENS IF I GIVE AWAY OR SELL A RESOURCE?”

If you, your spouse, or a co—owner give away a resource or sell it for less than it is worth, you may be ineligible for SSI benefits for up to 36 months. How long you are ineligible for SSI benefits depends on the value of the resource you transferred.” (From SS Website – SSI Homepage)

Consequences of exceeding \$2000

- **Assessment of Overpayment and Demand to Repay**
- **Termination of SSI benefits**

Social Security could notify you YEARS later.

INCOME

ONLY the income of the Applicant (not parents)
should be considered once the Applicant turns 18.

*After SSI is awarded,
income must be reported each month
(even if it will not cause an offset to the benefits)*

Report wages

Report cash gifts

**USE MYSS PORTAL – get receipt
(don't rely on phone call)**

CHECK NOTICES!

**Social Security should send a notice when it changes the benefit
(reduction, increase, *termination*)**

THERE ARE OFTEN ERRORS.

Address these quickly to avoid losing all benefits.

The SSI Application & the Disability Report

Risa has told you about the critical financial issues that you must understand before applying for Title XVI (SSI) benefits for your young adult.

I'm going to discuss the steps in filing an SSI Application.

This involves the **Application** & also a **Disability Report**.

Should I Do the Online Application and Disability Report Myself?

There is a new option of doing the SSI Application and Disability Report online.

However, I am not going to recommend it to you primarily because the questions are not well-written and can be easily misinterpreted. Thus, while not a perfect system, I recommend making an appointment to do the application with a Social Security representative.

There are various ways of getting started. You can call the national or local office to make an appointment to file the SSI application or you can now go online to make the appointment.

1. Whether you call for the appointment or make the appointment online, the date on which you make this request for the application appointment is critical because it establishes your child's Protective Filing Date; if entitlement to benefits is established, SSA can go back to the date that you made the request for an application when figuring out your child's retroactive benefits. The national number is below. I've also added a slide at the end of our presentation that lists more of the District Offices' phone numbers.

The national number for an appointment at **800 772 1213**.

Be Aware:

Social Security's phone lines are being overwhelmed.

You may have to be on hold a long while or call multiple times before you get through.

- **New Online Tool to Make Your**
 - **SSI Appointment**

- Arc has added to its website a quick link to the SSA.gov website to make the appointment.

If you have that handy, use that. If not, got to [SSA.gov](https://www.ssa.gov)

*(Please make sure that you have the correct website;
the information you will be providing is **very sensitive**.)*

- Once at SSA.gov, click on the word

MENU

That will take you to a new page
and you will click on the phrase

“Supplemental Security Income” (AKA Title XVI)

- Next prompt - Click “**Get Started**”
- Next prompt – Click “**Next**”
- Next prompt, *press the link for*
“*Privacy Act Statement*” *and then click*
“**START**”
- From there, you will have 8 pages of short identification questions to answer.

To answer these questions, you will need to have the following basic information:

- The name, date of birth, and SSN of the applicant;
- The applicant's mailing address and phone number;
- Your name and phone number, if assisting, and
- If you check it often, I suggest giving the Agency your email address.

Whatever way you use to make the appointment, it is critical that you give the Agency a phone number that will not block their call.

Some of the mobile phones will block the Agency's phone calls, as if it were spam. For that reason, if at all possible, have Social Security call you for the application on a landline. You could also ask for an in-person appointment, but with Covid restrictions still in place, the Agency continues prefer phone appointments.

In 7 to 14 business days, Social Security will send you notice of the appointment date and time by mail and email if provided.

What do I need at the time of the actual appointment?

1. If the applicant is for someone over 18, you will need the applicant there to identify themselves and to give permission for you to speak on their behalf;
2. You will need the details of the applicant's financial information (names of bank accounts, amounts in each account, type and amount/value of other resources like savings bonds and stocks);

and

3. You will also need at least the following:

- **Identifying information:**

- the applicant's full name
- date of birth
- place of birth/citizenship status
- Social Security number

- **Education Information:**

The schools the applicant went to, especially important, the schools in which they received special education/accommodations.

- **Work Information:**

- the names and addresses of employers that your applicant worked for in 2022 and 2021
- the employment period and hours worked per week
- the amount they were/are paid per hour
- their job title and their work duties

If there were earlier jobs, and/or self-employment, it would be good to have that information as well.

- **Medical Information:**

The names of the chronic and/or recurring conditions/diagnoses that have a negative impact on your applicant's ability to work, and

TO THE BEST OF YOUR ABILITY,

- the contact information for each doctor/healthcare provider your applicant has seen in the last few years;
- the condition(s) each provider is treating and the treatment provided, including the names of medications; and
- the names of and approximate dates of significant tests.

- **Vocational Services Information:**

The contact information for any DVRS or DDD services your applicant has been receiving, if applicable.

WHAT IS THE DISABILITY ONSET DATE?

Social Security will ask for an **onset date** of disability.

If this is an SSI application **only**, please note that SSI benefits cannot be paid prior to the protected filing date.

From my perspective, I am not concerned with the date you choose, **as long it is a date before the applicant turned 22 years of age**, if that is accurate.

WHAT'S NEXT?

Once you have finished the Application and Disability report, Social Security will review the financial information you provided and make an assessment of whether your applicant meets financial eligibility for an SSI application.

If they do, **the case will be moved over to DDS** where a Claims Adjudicator will be assigned. (That should take about 10 days, but it has been taking longer.)

If you do not receive any forms or other communications within a month after the application has been taken, I recommend calling the District Office and asking for status. (Again, many of the District Office phone numbers can be found on a slide attached to the end of this presentation.)

I'll be back to talk about DDS forms.

Risa will now address the other programs that your applicant might qualify for.

Is there any other Social Security program I should be applying for?

Title II (SSDI)

Disabled Adult Child (DAC)

Title II (SSDI)

- Based on applicant's own work credits
A person under 24 years of age needs only **6 credits** to qualify.

In 2022, earnings of \$1510 equal one credit.

A maximum of 4 credits can be earned every year.

\$6040 annual earnings gives maximum annual credit

- Amount of monthly Title II payment is based on past earnings.
- Pays retroactive benefits up to 12 months prior to Application.
- Can receive SSI and Title II, depending on the amount of the Title II benefit.

Assuming eligible for \$604.98 in SSI

Receiving

\$200.00 in Title II (treated as countable income)

\$404.98 from SSI

- Medicare eligible (not Medicaid) -- *unless also receiving SSI*
- No asset limit -- *unless also receiving SSI or NJ Medicaid in the Aged, Blind, Disabled (ABD) category.*
- Need to report earnings monthly – *Trial Work Period*

DISABLED ADULT CHILD

- Available when Parent triggers an event:
 - Parent elects SS retirement benefits
 - Parent receives SS disability benefits
 - Parent dies
- **Disability must be found to have started prior to age 22**
- Amount of monthly benefit is 50%-75% of parent's benefit
- Retroactive benefits between 6 and 12 months, if applicable.
- Considered to be a Title II benefit
(Medicare, No asset limit (unless also receiving SSI), etc.)

DISABILITY ONSET DATE For SSI Application

SSI benefits are paid only as of the date of the Application/PFD.

The SS claims representatives like to use the date of the Application/PFD as the onset date because it is less work.

It is important to make sure that the **SSI Application** uses an onset date **after age 18 and before age 22** – *even if the application is made after age 22.*

It is important to make sure that the **Decision** recognizes an onset date **before age 22.**

This will save time for a later DAC Application.

The Application Process

1. Information Gathering (The Application and Disability Report)

2. Development of the Claim (obtaining support: medical, educational, work)

subcontracted to DDS



3. Initial Decision

4. **Appeal** unfavorable decisions (*Initial Decision, Reconsideration Decision*)

5. Hearing with Administrative Law Judge

**What forms will Social Security
ask us to complete?**

**How should we complete
them?**

The forms: We already discussed the **Application** and **Disability Report** – those are the major forms that start the process.

At the District Office Level (before the case is moved on to DDS and up for Medical Review), you will also be asked for an:

- **SSA-827 (authorization to disclose information)**
 - this is necessary for SSA to request the applicant's medical and educational records
- possibly a couple of other **authorizations for wage and employment** information.

These are easy forms that require little more than a signature.

- **SSA-821 – Work Activity Report-Employee**

You may also be asked to provide an SSA-821.

This is likely going to be requested if the applicant's work has been or is significant in hours and/or pay.

An SSA-821 is generally not requested when the work was part of an unpaid internship program.

The Work Activity Report is very important, but I will not be addressing it tonight because it does not apply to most of you. Tonight we are concentrating on what everyone needs to know. If a group would like us to come back and discuss this form in detail, that would be the better way of proceeding.

From District Office to DDS

Once the case is at DDS (Division of Disability Determination Services) the case will be assigned to a CA (Claims Adjudicator).

The CA is the great gatherer of information.

They will:

- send requests for records to the applicant's healthcare providers,
- send requests for records to the applicant's school, and
- **send the applicant and his/her "contact" forms to complete and return.**

You will not have much control over the requests sent to third parties (doctors, schools, etc.).
You do have control over what you provide.

The forms that will certainly be sent to you and your child are:

**The Function Report (SSA-3373) and
The Function Report Third Party (SSA-3380).**

Function Reports are 10 pages long and ask 25 questions about the applicant's daily activities, and they are the most mystifying (annoying) of the forms Social Security sends.

What makes them annoying?

- Function Report questions are not tailored to any particular type of claim.
- Your 18-year-old will be asked to fill out the same form given to a 50-year-old alleging problems that are vastly different from your child's situation.
- The questions are broad and repetitive.
- The response time to answer is short, usually 10 days.

While the responses will likely not "win" the case,
they can easily cause the Application to fail.

Why are Function Report forms requested?

Isn't the diagnosis enough?

A diagnosis alone does not mean there is a severe impairment that entitles the applicant to SSDI or SSI benefits, and the burden of proof is on the applicant.

While the diagnosis may be very compelling, Social Security still needs to know what the actual *impact of the condition* is on this applicant's ability to do work-related activities.

The Function Report Adult (SSA-3373)

CARDINAL RULE #1

Don't Do the Function Report for your child!

For many legitimate reasons, you will be tempted to do the Function Report for your son or daughter.

Don't Do It!

WHY NOT?

For the same reason you do not do their school tests, you should not answer this questionnaire for them.

If you write out their responses, the Claims Adjudicator will have no choice but to credit **your young adult** with:

- a vocabulary that they don't have,
- a processing speed that is not their own, and
- handwriting or typing abilities that do not reflect their abilities.

If I should not do the form for my child, how will the form get done?

If your child can read and write, explain to them that they need to do the form because of the SSA claim and ask them to do it to the best of their ability.

Some will take the form, answer the questions and hand it back to their parent. That applicant should sign the form. Once done, fax it or mail it to DDS. Remember to **make a copy** of the form for your files.

Many will find the form overwhelming and get through a couple of questions before getting upset.

If the form is left largely undone, explain *what happened* in the **Remarks Section** at the end of the document.

Where it asks for the name of the person completing the form, write your child's name, and state that you wrote the Remarks, then fax it or mail it to DDS. Remember to **make a copy** of the form for your files.

If your child does ask you to sit down and assist, that's okay.

Just make sure that the responses are theirs and

WRITE SOMETHING IN THE REMARKS SECTION EXPLAINING THE ASSISTANCE YOU GAVE AND WHY IT WAS NECESSARY.

For instance:

- If you had to read the questions to the child
- If the child had to do it over a course of days
- If you had to write your child's answers in the form

Where the forms asks for "Name of the person completing this form,"
write that you and your child completed the form together.

Please note, **neatness does not count.**

If your child's handwriting is horrible,
do not make them rewrite it,
and do not write it out for them.



The Function Report Adult - Third Party Form (SSA-3380)

The **Third Party Function Report** is sent to an identified trusted contact of the applicant, most probably you or the child's other parent.

In your child's case, it will likely be the **Third Party Function Report** that will be the more informative report.

If you look at the two Function Report Forms side by side, you will quickly see that the forms are nearly identical. However, your answers may be vastly different from those of your child, and that is fine.

For instance,

while your child may have only a few words to say about
their personal hygiene,

you may have ***a lot*** to say on this topic.

How to Answer Third Party Function Report Questions

How should you respond to the questions set out in this form?

CARDINAL RULE #2

You should respond to the questions

HONESTLY,

AS IF UNDER OATH,

and

WITH KEEN INSIGHT!

What I find is that parents will:

1. Overlook problem behaviors, often because there has been some improvement over time, or
2. Write glowing statements about the accomplishments of their children, or
3. Actually, state the unvarnished truth about their child.

Please try for #3.

The goal is to accurately inform the SSA about your child's ability to function.

Below are some of the Third Party Function Report questions that people often have difficulty with.

While your child's situation is unique, I offer example answers here based on a hypothetical claimant, Danny Doe. Danny is a 20-year-old male who has a borderline FSIQ, is on the autism spectrum and has been diagnosed with generalized anxiety disorder.

Please note, NO MATTER WHAT I HAVE WRITTEN, your responses must be based on your child, not Danny Doe.

SECTION B - INFORMATION ABOUT ILLNESSES, INJURIES, OR CONDITIONS

8. How does this person's illnesses, injuries, or conditions limit his/her ability to work?

Comment: This is actually a reasonably good question. There will be more specific questions later on, but your response to this one can set the tone for the reader.

EXAMPLE RESPONSE:

SECTION B - INFORMATION ABOUT ILLNESSES, INJURIES, OR CONDITIONS

8. How does this person's illnesses, injuries, or conditions limit his/her ability to work?

Danny needs a great deal of supervision and encouragement for even simple daily tasks. Without frequent reminders, encouraging words and supervision, he will generally freeze up and get nothing done. His frustration tolerance is very low when he does not get quick feedback and encouragement.

By my answer, I am telling the Claims Adjudicator that if Danny were in a job, he would take other people off task to give him the attention he needs to accomplish his work.

That would not be tolerated in a competitive work environment.

If my responses are supported by educational or medical records, Danny's disability case will be more likely to prevail.

■ SSA-3380 question 9

SECTION C - INFORMATION ABOUT DAILY ACTIVITIES

9. Describe what the disabled person does from the time he/she wakes up until going to bed.

Comment: This is an unreasonable question.

If anyone were to truly answer this question in detail, they would need at least 6 pieces of paper. Social Security gives you 5 lines for your response. So, how do you answer?

I recommend you accept that you have only a few lines and give a general description of what your child does on a typical day, assuming they have typical days.

SECTION C - INFORMATION ABOUT DAILY ACTIVITIES

9. Describe what the disabled person does from the time he/she wakes up until going to bed.

I wake him up at 6:45. On shower days, he needs me to give him instructions. If clothing from the day before is in his room, he will generally put that clothing on again. With my supervision, he will put together a breakfast for himself. He is often ready for the bus before it arrives. He goes to his program; the bus brings him home at 4:10. He has a snack and goes to his room; he paces a lot. At 6pm, I ask him to come down and set the table for dinner. I usually have to ask 3 times and then we set the table together. We eat together at 7pm. He will then play with his action figures in his room until "lights out".

Comment: The answer I have given is as complete as you can get on this form, and it still does not fully answer the question.

Do not sweat it. The questions are repetitive; by the time you have completed the rest of the form, the Claims Adjudicator will have a good sense of your child's daily activities.

SSA-3380 - QUESTION 13:

13. What was the disabled person able to do before his/her illnesses, injuries, or conditions that he/she can't do now?

Comment: This question may seem difficult, but it isn't.

Example response:

13. What was the disabled person able to do before his/her illnesses, injuries, or conditions that he/she can't do now?

Danny has been easily distracted and routine dependent all of his life. He was first diagnosed with Autism when he was a toddler.

15. **PERSONAL CARE** (Check here if **NO PROBLEM** with personal care.)

a. Explain how the illnesses, injuries, or conditions affect this person's ability to:

Dress

Bathe

Care for hair

Shave

Feed self

Use the toilet

Other

Observation: Instead of explaining their difficulties, a lot of people inappropriately check the “No Problem” box.

Why do they check No Problem?

For some, it just feels too personal.

I suggest you don't take that approach.

There is a line for each type of personal care that Social Security wants you to address. Think about how your applicant does with each of the areas and write down what you know to be true.

Example Responses:

Dress: Danny likes to wear the same clothing several days in a row. He feels comfortable in them and he likes the smells. If the dirty clothing has been taken away, he will be confused and have a hard time figuring out what to wear.

Bathe: I get Danny to shower 3 days a week. On shower days, he needs me to stand by the bathroom door and remind him of what he needs to do. About $\frac{1}{2}$ the time, I need to get him back into the shower to get the remnants of shampoo out of his hair.

Care for hair: It gets greasy and knotty because he doesn't like to shampoo.

Shave: His dad shaves him because he is scared to use any kind of razor himself.

Feed Self: He can feed himself, but does not know how to handle a fork correctly.

Use the toilet: Danny is getting better about wiping himself, but at times he gets frustrated with that situation and makes a mess on himself. (Lately, that's been happening 2-3 times a month.)

Other: He won't brush his teeth unless someone watches him.

I wrote a lot here.

Your applicant may have far fewer issues than Danny Doe.

If the child has no issues with some or all of these personal hygiene issues, you need to leave those areas blank. **We are not going to fabricate problems.**

This is how my answers for the hypothetical claimant look typed out. Not neat, but readable, and it does give a lot of information about Danny's functioning.

15. **PERSONAL CARE** (Check here if **NO PROBLEM** with personal care.)

a. Explain how the illnesses, injuries, or conditions affect this person's ability to:

Dress Danny likes to wear the same clothing several days in a row. He feels comfortable in them and he likes the smells. If

the dirty clothing has been taken away, he will be confused and have a hard time figuring out what to wear.

Bathe

I get Danny to shower 3 days a week. On shower days, he needs me to stand by the bathroom door and

Care for hair

remind him of what he needs to do. About 1/2 the time, I need to get him back into the shower to get the shampoo out of his hair. Hair gets greasy and knotty because he doesn't like to shampoo.

Shave

His dad shaves him because he is scared to use any kind of razor himself.

Feed self

He can feed himself, but does not know how to handle a fork correctly.

Use the toilet

Danny is getting better about wiping himself, but at times he gets frustrated with that situation and makes a mess on himself. (Lately, that's been happening 2-3 times a month.)

Other

He won't brush his teeth unless someone watches him.

▪ **SSA-3380 - QUESTION 16:**

MEALS

a. Does the disabled person prepare his/her own meals? Yes No

If "Yes," what kind of food is prepared? (For example, sandwiches, frozen dinners, or complete meals with several courses.)

Comment: I don't like Yes or No questions and I don't like the phrasing of this question.

CARDINAL RULE #3

When the question does not ask for the information you want to give, answer the question as if it did.

16. MEALS

a. Does the disabled person prepare his/her own meals? BREAKFASTS ONLY Yes ^{and} No

If "Yes," what kind of food is prepared? (For example, sandwiches, frozen dinners, or complete meals with several courses.)

Danny makes breakfast - Cereal or will reheat with supervision. Danny can pour cereal and milk into a bowl. Danny cannot microwave without supervision because he'll make mistakes and burn the food and/or himself. He is not permitted to use the stove to or oven.

How often does he/she prepare food or meals? (For example, daily, weekly, monthly.)
5-6 days a week.

How long does it take him/her? Depends on what he is making, but generally under 5 minutes.

Any changes in cooking habits since the illness, injuries, or conditions began?

Danny has never been able to cook independently.

b. If "No," explain why he/she cannot or does not prepare meals.

Because he is inattentive, we have agreed that he should not use the stove top or oven.

17. HOUSE AND YARD WORK

a . List household chores, both indoors and outdoors, that the disabled person is able to do .
(For example, cleaning, laundry, household repairs, ironing, mowing, etc.)

b. How much time do chores take, and how often does he/she do each of these things?

c. Does he/she need help or encouragement doing these things?

Yes No

If "YES," what help is needed?

Remember Cardinal Rule #3:

When the question does not ask for the information you want to give, **answer the question as if it did.**

17. HOUSE AND YARD WORK

a . List household chores, both indoors and outdoors, that the disabled person is able to do .
(For example, cleaning, laundry, household repairs, ironing, mowing, etc.)

With a lot of encouragement, Danny will join me in setting the dinner table most nights. We are trying to build a routine of collecting garbage from the various trash cans in the house and putting that out twice a week. He helps with laundry. He seems to like folding the laundry with me, especially when it is still warm. He will not do any chore alone, and I must make sure he washes his especially before we set the table or fold the laundry.

b. How much time do chores take, and how often does he/she do each of these things?

Setting the table, most nights, first he has to wash his hands and then it takes about 5 minutes for the 2 of us to set the table properly for the 3 of us. Trash collection – that usually takes about 15-20 minutes, and sometimes he forgets a room. Laundry – we usually do laundry 2x a week. Once Danny washes his hands and the laundry is clean, it generally takes us 30-45 minutes to fold it and put it away.

c. Does he/she need help or encouragement doing these things?

Yes No

If "YES," what help is needed?

He needs encouragement, someone to do the task with him and someone he likes to be with while doing tasks.

SSA-3380 - QUESTION 18:

Getting Around

a. How often does this person go outside?

Comment: The question is overly vague!

Example Response:

18. GETTING AROUND

a. How often does this person go outside?

Danny goes to school 5 days a week. In good weather, we may take a walk in the neighborhood.

b. When going out, how does he/she travel? (*Check all that apply.*)

Walk

Drive a car

Ride in a car

Ride a bicycle

Use public transportation

Other (*Explain*) _____

Remember Cardinal Rule #3:

When the question does not ask for the information you want to give, **answer the question as if it did.**

For Example:

b. When going out, how does he/she travel? (Check all that apply.)

Walk

Drive a car
very limited

Ride in a car
Mostly

Ride a bicycle

Use public transportation

Other (Explain) Special school bus or Access Link

c. When going out, can he/she can't go out alone. _____
If "NO," explain why he/she can't go out alone. _____

Remember Cardinal Rule #3: When the question does not ask for the information you want to give, **answer the question as if it did.**

▪ Example response:

c. When going out, can he/she go out alone?

Usually NO

Yes

No

If "NO," explain why he/she can't go out alone.

Danny is fearful. He has been bullied, and is afraid that he will be bullied if he goes out alone. The reverse problem is also true.

When people seem nice, Danny is happy to give them his trust, and his lunch money and the keys to our house. He is easily exploited.

d. Does the disabled person drive?

Yes

No

If he/she doesn't drive, explain why not. _____

Remember Cardinal Rule #3: When the question does not ask for the information you want to give, **answer the question as if it did.**

d. Does the disabled person drive?

VERY LIMITED

Yes

No

If he/she doesn't drive, explain why not.

Danny does not like to be alone. Danny has a driver's license. He worked very hard for it, and likes to drive but only short distances, and only if I am in the car with him. I am trying to teach him to drive to Shop Rite because I am hoping that he will be able to get a part time accommodated position there. I have him drive me there 2x a week.

SSA-3380 - QUESTION 22d:

Question: Does this person have any problems getting along with family, friends, neighbors, or others?

Comment: Each situation is unique. If everyone is kind to your child and he gets along with everyone, that's great. Our hypothetical Danny has issues that this question does not actually address, but we can use this space as an opportunity.

Example Response:

d. Does this person have any problems getting along with family, friends, neighbors, or others?

Yes often No

If "YES," explain.

Danny does not understand some people's reactions to him. He is ready to be warm and friendly with everyone, but he gets bullied and sometimes people will pretend to be his friend just to take advantage of his kind heart.

23. a. Check any of the following items the disabled person's illnesses, injuries, or conditions affect:

- | | | | |
|------------------------------------|-----------------------------------|---|--|
| <input type="checkbox"/> Lifting | <input type="checkbox"/> Walking | <input type="checkbox"/> Stair Climbing | <input type="checkbox"/> Understanding |
| <input type="checkbox"/> Squatting | <input type="checkbox"/> Sitting | <input type="checkbox"/> Seeing | <input type="checkbox"/> Following Instructions |
| <input type="checkbox"/> Bending | <input type="checkbox"/> Kneeling | <input type="checkbox"/> Memory | <input type="checkbox"/> Using Hands |
| <input type="checkbox"/> Standing | <input type="checkbox"/> Talking | <input type="checkbox"/> Completing Tasks | <input type="checkbox"/> Getting Along with Others |
| <input type="checkbox"/> Reaching | <input type="checkbox"/> Hearing | <input type="checkbox"/> Concentration | |

CARDINAL RULE #4

While your child's primary medical problems may be non-exertional, you need to inform SSA of all your child's work-related limitations. So, of course you will check off and talk about the applicable non-exertational limitations, but you will also check off and talk about your child's exertional limitations as well.

Social Security is tasked to look at the whole person, not just the primary medical impairments.

So, if your son or daughter has difficulty lifting more than 5-8 lbs., or has a problem standing for any reason, or any similar limitation, you need to tell Social Security about that as well as tell Social Security about their difficulty with following instructions.

The Remarks Section:

At the end of the form, you will have a page to add in your remarks.

This will give you the opportunity to further explain your applicant's limitations.

You can also use this place to comment further on their response, or lack of response, to the First Party Function Report, or anything else you think the Claims Adjudicator should know.

CARDINAL RULE #5

Once completed, re-read the entire report.

If it describes your child well, send it in.

If you are questioning it, try again or share it with your partner or someone else who can give you some honest feedback.

Only once you are satisfied, fax it or mail it to DDS. Remember to **make a copy** of the form for your files.

To Review – the Cardinal Rules are:

Cardinal Rule #1:

Don't Do the Function Report for your child

Cardinal Rule #2:

Respond to the questions HONESTLY, AS IF UNDER OATH, and WITH KEEN INSIGHT.

Cardinal Rule #3: (The Big One!)

When the question does not ask for the information you want to give, answer the question as if it did.

Cardinal Rule #4:

While your child's primary medical problems may be non-exertional, you need to inform SSA of all your child's work-related limitations. So, of course you will check off and talk about the applicable non-exertational limitations, but you will also check off and talk about your child's exertional limitations as well.

Cardinal Rule #5:

Once completed, re-read the entire report.

Only once you are satisfied that it describes your child accurately, will it be ready to send to DDS/SSA.

Remember to **make a copy** of the form for your files.

**How should I address
working/work experience?**

Can working hurt the chances of an SSI award?

Income from working may affect eligibility.

Is the person's income too high?

If an applicant is earning *close to \$1350* a month (2022 figure), SS considers them to be performing “substantial gainful activity” and will determine that they are not disabled unless there are exceptional circumstances.

Income can be reduced by

- 1) Impairment Related Work Expenses (**Applicant**, not parent, must be paying these expenses.)
- 2) Form 3033 from employer (For future discussion with Form 821)

Work/Work Experience can provide support for a disability claim

Job exposure through school

Read reports of job coach and teachers – do you think they are accurate?

If yes, submit to DDS (even if school tells you that they have sent records).

Paid jobs

How did your child get the job? (family, friend?)

Is there a job coach?

Does the child need more supervision/reminders/redirection?

Is/Was the child doing ALL the tasks required under the job title?

Is/Was the quality of the work the same as others?

Is/Was the productivity/pace the same as others?

How many hours is/was the child working/ are they able to work more? (tired? angry? frustrated?)

How long has the child had the job and do you have feedback from the employer?

If no longer working at the job, how long did it last and why did it end?

Volunteer experience can also provide helpful information about abilities and limitations.

Working or Volunteering (if the person is capable of this) tells SS something about the person's character.

Work performed *after* SSI award

Report earnings each month

Include details of **Impairment Related Work Expenses**
(paid by your child) to reduce income deduction.

To be ready for **Continuing Disability Reviews,**

Keep written feedback from job coaches and employers

Keep notes of incidents reported by your child or employer

Continue with treatment or support

APPEAL

APPEAL

APPEAL

About 4 months after the case has gotten to DDS,
you will receive a decision.

What should you do if it is a medical denial?

If it is a medical denial, it will most likely include the following boilerplate statement:

“We have concluded that your physical condition is not considered severe enough to be disabling. You have difficulty performing certain tasks due to various mental issues.

However, you should be able to take care of your personal needs, understand and follow simple instructions, and perform simple jobs.”

The kicker is the following language:

“If your condition gets worse and keeps you from working, please contact any Social Security office about filing another application.”

On another page of this 4-5 page denial, surrounded by more boilerplate language, the Notice will mention the applicant’s right to file an appeal.

If You Disagree With The Decision

If you disagree with this decision, you have the right to appeal. We will review your entire case and consider any new facts you have. A person who did not make the first decision will decide the appeal.

- You have 60 days to ask for an appeal in writing.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.

Risa and I have met many people who gave up when they received their first medical denial.

Why did they give up?

We think for many families, it just comes down to the fact that this is an ugly process.

- Parents don't like having to prove that their loved one is disabled, especially when they try so hard to be "normal" and live their best life.
- Parents are tired and frustrated, and they are dealing with other pressing matters and don't have the energy to pursue the appeal. They don't need the benefits right now and think that they will apply again sometime in the future.
- Parents feel that they have already presented a compelling claim and don't expect that an appeal will result in a different decision.

If you have not retained an attorney before this point, you may want to when you need to appeal.

However, if you don't want to involve lawyers or non-attorney advocates, you certainly can do the appeal on your own.

You can appeal on the website [SSA.gov](https://www.ssa.gov) or by filling out a paper appeal and disability report. The forms will ask for your reason for appealing and there will be many questions about your child's ongoing treatment, work and overall condition.

▪ **Why would you not want to hire an attorney?**

I will leave that up to you, but you should know the following:

- Attorneys in this field are restricted in how much they can charge;
- Attorneys are only entitled to a fee if the application is successful.
- **The fee comes out of the applicant's retroactive benefits, and should be sent directly to the attorney by the SSA.**

▪

A few other arguments for hiring an attorney early in the process:

1. Your attorney will be paid the same amount whether you hire them early or late in the process.
2. If you don't win before you have to go before a judge, the likelihood is that the judge will push you to hire an attorney, and that can delay your case.

**But Really,
If SSA Has Denied The Claim,
Why Appeal?**

DDS claims adjudicators have little discretion to approve a case that is not crystal clear.

Additionally, they do not need to provide a well-reasoned explanation for their denial.

After your child is denied twice,
once at the Initial level
and once at the Reconsideration Level,
your next move is to appeal and
request a **Hearing before an Administrative Law Judge.**

The ALJ will:

- Look at all the evidence;
- Read through any briefs and legal arguments;
- Listen to testimony and the arguments at hearing;
and
- Render a New Decision.

While the claim cannot be awarded without medical evidence, the ALJ has much more discretion in deciding a case.

Additionally, the ALJ must provide a multi-page Decision detailing the reasons for the favorable or unfavorable finding.

**What happens if I don't appeal
within the allotted time?**

Can I apply again later?

Can I file a late appeal?

Can I apply again later?

You can file a new SSI application later BUT

- Benefits will be paid only as of the date of the new application. You cannot recover the months or years of benefits that would have been paid if the first application had been awarded.
- Over time, documents that could have been helpful get lost or are not current enough.

Can I file a late appeal?

IT DEPENDS:

In the denial, it will state that

“you must have a good reason for waiting more than 60 days to ask for an appeal.”

Such reasons may be:

- I didn't receive the denial until 4 months after it was supposedly sent;
- My house flooded;
- or
- I was sick, we were overwhelmed, and I didn't understand the process.

Social Security *may* allow you to file a little late in such cases, especially if you have proof of the extraordinary circumstances and/or provide a Certification of the facts, but there are limits, and *you are asking for a favor* that the SSA can deny.

Certainly, **if you have let more than 2 years pass,**
you will not be able to reopen an SSI application without first proving
that SSA was at fault for the delay in appealing.

That is not a hurdle that can easily be overcome.

QUESTIONS

Cahn & Rohrberger, LLC
700 Godwin Avenue
Midland Park, NJ 07432
Phone: 201-932-1972
Fax: 201-932-1973

Tracey Cahn, Esq.
Tracey@CRdisabilitylaw.com

Risa Rohrberger, Esq.
Risa@CRdisabilitylaw.com

**ALL INFORMATION PROVIDED IN THIS PRESENTATION IS INTENDED FOR EDUCATIONAL PURPOSES ONLY
AND SHOULD NOT BE CONSTRUED AS LEGAL ADVICE.**

District Office Phone/Fax Continued

Newark District Office

- Phone: 877 255 1507, Fax: 833-950-2690

New Brunswick District Office

- Phone: 877 803 6313, Fax: 833-950-3315

Parsippany District Office

- Phone: 866-331-7131, Fax: 833-950-3313

Paterson District Phone:

- Phone: 888 – 397-9806, Fax: 833-950-2976

Springfield Avenue (in Newark) District Office

- Phone: 877 455 7043, Fax: 833 950 3317

Toms River District Office

- Phone: 877-255-1497, Fax: 833-950-2670

Union District Office

- Phone: 877-803-6306, Fax: 833-950-2978