

Questions from the SOAR National Teleconference on Appeals – October 2008

Topic: Review on Record	
Question	Response
Is there a specific form to use to request a review on record? Can a review on record be denied?	There is no specific form to request a review on record. Such a request is usually not denied if you can show additional diagnostic or medical information that was not originally considered. That's a critical factor and is what qualifies an applicant for such a review. If such a request is denied and has the necessary information regarding additional diagnostic and/or medical records, ask to speak to a higher level person to follow up on the request.
How many times can you request a review on record?	You should only have to request it once, and they will approve it or not. If an original request for such a review is denied, and you obtain even more additional information, you could try making another request. The review on record is really about either additional diagnosis(es) or medical information that was not part of the early review. Those are the instances when you can ask for it. It's very helpful to talk with Social Security about having a contact person at the Office of Disability Adjudication and Review (ODAR), the hearings office, as having such a contact can really help with all this.
If you request a review on record and you plan to submit additional medical evidence, is there a time period during which you have to submit that information?	I would ask the office. One of the things that you want to find out is how close the individual is to being scheduled or has he or she already been scheduled for a hearing. If the person has not been scheduled for a hearing, I would ask how long it will take for a review on record to be done. It depends on how backed up each office is. If the person is scheduled for a hearing soon, you might want to think much more about getting all the medical info in and having the hearing. ODAR can tell you if the hearing's been scheduled or not. Keep in mind that, if the person doesn't have an appointed representative, it's very important to complete the Appointment of Representative form (SSA 1696). If the person has a representative, it's very important to work closely with the representative, often an attorney. I would make sure that contacts with any representative or attorney are documented so you have a record of contacts and outcome. It's even worthwhile to make any requests of the representative in writing. You would ask the applicant to sign your agency's release of information, send the release of information to the representative, and ask for a response by a certain date so that things don't drag on for the applicant.
This is a question for a case that was filed without a medical summary report in the beginning, on initial. If you were to do a medical summary report for a reconsideration or for a hearing, could that be considered new information for a review on record?	Yes. A good idea would be to ensure that you are the representative and you obtain a copy of the applicant's CD file so you'll know what has been considered. Then you can judge what's been missing and try to address it especially in your report. Keep in mind that it's extremely helpful to have the report signed by a physician or licensed psychologist so it's new medical evidence.

<p>Can you request a review on record if a judge has not been assigned yet? In CA, it is taking one or more years to even get assigned to a judge.</p>	<p>Yes, you can. Such a review is done in the ODAR office by staff there. It's extremely helpful to request such a review. Remember new medical information or new diagnosis(es) must be available to make such a request. In addition, if you don't have new information, you can, alternatively, request an expedited hearing if the person is homeless or in dire circumstances, e.g., has an eviction notice.</p>
--	---

Topic: Appointment of Representative (SSA-1696)

Question	Response
<p>Can there be more than one representative on file and will both representatives get copies of all notifications?</p>	<p>The answer to that is yes, although it's not a terrific idea, because you then have to make sure that you have excellent communication and collaboration to know which representative is going to do what. So, you're probably better off thinking about having one representative and having that person take the responsibility. If that agency or person then can't continue for some reason, you can do another 1696 with a new agency or person to follow up.</p>
<p>Can a non-profit agency be an appointed representative or is it only a specific person?</p>	<p>With the revision of the 1696, you can have a nonprofit agency be the appointed representative. The person who signs the form, then, is the one to whom the mail is going to go. On the new 1696, you'll see where it says there's a designation of "designated associates" within the agency who can also receive the information. This allows for others, e.g., clerks within the agency, to take care of what they need to vis-à-vis the representation.</p>
<p>Being a representative for children</p>	<p>The 1696 for kids is a tough issue. My understanding is that the SSA policy, in general, is tied to the concept of who is a "proper applicant" for benefits. So, an applicant who's an emancipated minor or, a child aged 15-17, in certain circumstances (e.g., not under the care of another person or institution or someone who doesn't have a court-appointed representative), might be able to sign. Children under 15 should not sign this form. At the same time, children age 12 or above should be able to sign the release for information (the SSA 827). As the county is the legal guardian, I would think a county worker could sign the 1696, but I'd check with SSA about this.</p>

Topic: CDs of Medical Records

Question	Response
<p>Can you request a CD with the medical records at any level of appeal?</p>	<p>Yes, you can. The only consideration is from where you need to make the request. So, if you're at the reconsideration level, you ask the DDS to give it to you or your local Social Security office. If you're at the hearing level, you would ask the local Social Security office or contact ODAR.</p>
<p>Can anyone without representation order the CD that contains their own information or is having representation necessary?</p>	<p>Yes, a person should be able to get a copy of his or her own. But, I really would urge folks to have representation, because it helps to have somebody assist who's been trained in these processes. It's may not be obvious to the applicant what is critical to add or address in the CD record unless he/she knows more about the processes, what's required, etc. So, it's very helpful</p>

	to have an advocate assist.
Is there a generic CD available to see the information that would be available in a client's file?	No. There is no sample CD. The CD is an applicant's record. What will be in the CD is the medical/collateral documentation that has been reviewed for decision-making and the paperwork that the DDS uses to determine eligibility.
Topic: Waiting Period for Re-applying	
Question	Response
Is there a waiting period that someone has to go through before they're permitted to reapply for disability after being denied?	The easy answer to the first one is that there's no limit. You could get denied and decide to re-file the next day. However, if someone is going to re-apply and is within the time period to file for an appeal, it's better to appeal since that would keep the original protective filing date, an important consideration.
And given that the waiting period for a hearing is up to 2 years, is it ever warranted to advise the client to let the appeals request lapse in order to submit a new application and utilize the SOAR process?	If someone has been waiting for a long time for their hearing, I would probably try to advocate for a review on record or an expedited hearing to maintain the protective filing date. If the person was just recently denied and there's so much missing that he/she is better off starting over again, you can do that. It's a judgment call. You want to make sure you discuss this with the applicant and with SSA to weigh the pros and cons.
Topic: Expedited Review	
Question	Response
Could a request for an expedited hearing include a terminal illness or serious illness that's need care, and the person is unable to receive care because of having no benefits/insurance?	Yes, such a situation may qualify for an expedited hearing. You'll need documentation of the seriousness of the illness and the difficulty with getting treatment. Discuss what's precisely needed with SSA.
Topic: Working with Attorneys	
Question	Response
What should we do when working with a non-responsive attorney?	I would ask for the applicant to sign a written release for permission to contact the attorney. I'd then call the attorney and find out as specifically as possible where things are, advocating for whatever alternatives are available, e.g., expedited hearing or review on record. If the attorney is of no help, I'd go to the local SSA office and explain the "dire need" of your client and see if they can help. I would make sure to document the contact with the attorney. It's worthwhile to make a request to an attorney in writing, send your release of information and ask for a response by a certain date so that you are ensuring that things do not drag on for the applicant.
What if there are no attorneys available to represent the	If the person doesn't have any representation, I would call the state protection and advocacy organization as a possibility. Often, this legal

applicants?	services provider will assist in such situations. If not, the staff there will likely have suggestions. Legal Aid or Legal Services in communities also often assist with this type of case. Secondly, if somebody has an attorney but they're not being responsive, I would contact the protection and advocacy agency to ask if they can give any suggestions on what to do vis-à-vis the situation. You can also ask SSA for suggestions.
Is there ever a reason to get an attorney involved at an earlier stage than at the hearing stage?	There could be a reason to get an attorney involved at initial or reconsideration if there is a more technical legal question. Most attorneys, in my experience, don't get involved before the hearing stage. Keep in mind that, generally, the initial stage and the reconsideration stage are much more about clinical proof than legal issues. There are a few legal advocates around the country that get involved sooner, but it's not the norm. If your P & A isn't helpful, I'd try legal aid/legal services and/or contact your local bar association to see if there is a pro bono attorney group in your state. Most states have something like this. There is a wonderful SOAR project in a Philadelphia legal homeless advocacy program doing initial applications.
Topic: Flagging Applications for Homelessness	
Question	Response
Is there a way to flag the application as homeless via the initial internet application?	No, not that I know of. But, I would certainly be sure to let SSA or the DDS know that the person is homeless to make sure that SSA does the flag. The flagging happens in the transmittal document from SSA to DDS.
Topic: Other Questions	
Question	Response
Would DDS allow more time to provide for a limited English-speaking claimant? Or is the rule the same as for anyone else who needs to request an administrative law judge hearing request.	Keep in mind that, for DDS, there is not exactly a time limit. With SSA, the initial SSI has a deadline for completion that is 60 days; for SSDI, it's 6 months. What I would do is make sure that SSA knows that the person has limited English-speaking ability right from the beginning so translation can be provided. Keep in mind that when somebody does the disability report, there is a question about whether or not the applicant is English-speaking and, if not, what language is spoken. If you find out that somebody's already applied and maybe he/she didn't indicate a language issue, you want to be sure that you inform SSA and DDS. Regarding time for filing a request for a hearing, keep in mind that a person must file an appeal within 60 days unless SSA considers an extension for good cause.
Strategies for getting original birth certificate or other ID documentation	For people in jail or prison, sometimes the facility will issue a photo ID that contains the information necessary to document identity per the SSA rules. If a birth certificate is not available, alternative proof of identity may be possible, e.g., a baptismal or other birth record can be used. I would talk with SSA that you can verify who this person is and explore possibilities for ID, e.g., would a letter on your letterhead suffice? If the individual has benefits, identity has likely been proven.

<p>How does the Ticket to Work program work?</p>	<p>Ticket to work is a program that allows folks to obtain a voucher from SSA to use in accessing vocational resources. Medicaid is NOT lost when a person uses a ticket to work. SSDI beneficiaries are eligible for ticket to work in some instances; they need to discuss this with SSA.</p> <p>For SSDI, if a person goes to work, there is a process that he or she goes through that maintains the SSDI check for at least 9 months along with any earned income. After the check is stopped because of a level of earned income (no sooner than a year after starting working), the individual keeps Medicare for 7.75 years. So, fear of losing insurance is not a reason not to try to work. SSA's work site is really good: www.ssa.gov/work. In each state, there are benefits planners who can work out particular individuals' situations so the person will know what will happen in his/her work situation specifically. You can find out how to contact these planners on the SSA website. This is a very good website.</p>
<p>Using photographs as evidence</p>	<p>While not medical evidence, photos can be highly supportive and informative. Certainly, there's no harm in submitting a photograph as part of the information provided. Be sure to have written permission for doing so from the applicant. I've done this in some instances, and it's been helpful.</p>