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Memorandum: Testifying at Your Disability Hearing

Arrive Early

Unless your attorney 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 lawyer 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 may 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. There also may be a small table for the judge's assistant. Usually there is a desk for the judge that sits on a small riser that is slightly above the level of the conference table where you will sit.

The Recording Equipment

Each hearing room has its own recording equipment, which will be used to record your hearing. Because your hearing will be recorded, it is important for you to speak clearly when you answer questions. The microphones are very sensitive to sound so 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 attorney. 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.

Also seated at the conference table (or perhaps at a small table next to the conference table) will be the judge's assistant who operates a computer, which is used to make a CD-ROM that will contain the recording of the hearing.

You are allowed to bring witnesses and, if you wish, 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. They 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 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, more than half of judges’ decisions

nationwide are 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 lawyer on the other side who is going to cross-examine you. Judges usually do not "cross-examine" a claimant. The judge is neither your adversary nor 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 delays, and it is 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 has it taken so long for me to have a hearing?" and so forth.

The only time you should ask the judge a question is when you do not understand what is being asked of you. Judges and lawyers 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—someone 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, lawyer words or doctor words. In fact, it's much better if you do not use such terminology; instead, talk to the judge the same way you would talk to an old friend.

The Order in Which Things Happen at the Hearing

Many judges begin disability hearings by reciting the "case history" of your disability claim and stating the issues to be decided. Judges often state what you have to prove in your case—but they 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 this, 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. Then the judge will give your lawyer a chance to ask you some questions. Occasionally, if a claimant is well prepared to testify, the lawyer doesn't have to ask any questions at all.

Some judges, however, expect lawyers to handle most of the questioning. If so, answer questions asked by your lawyer as if a stranger were the one asking them. Sometimes a claimant may give less than complete answers when his or her lawyer asks questions, because the lawyer 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 lawyer will be allowed to question any witnesses you've brought to the hearing. It is really important for your case to bring at least one witness to your hearing to testify in support of what you say, to give the judge details about your impairments and how they affect you, or to offer a different perspective on your medical problems.

After your witness's testimony, 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 lawyer do that. Most judges will give a lawyer 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. A few judges issue what is called a "bench decision," that is, a decision stated right at the hearing. Even if the judge issues a bench decision, the judge still must issue a short written decision, which will be mailed to you with a copy to your lawyer. The wonderful thing about the written part of the bench decision is that it comes only a few days after the hearing. When the judge issues a regular decision, 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, and 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 (within reason).

Testify Truthfully

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.

Tell 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 we 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

If you are asked when something happened, the judge is likely to 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 15 years; and second, we have to prove that there aren't 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 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.

A lot of people have heard the language "totally and permanently disabled." This phrase, which comes from workers' compensation cases, does not apply in Social Security disability and SSI disability cases. For Social Security, you don't have to be "permanently" disabled; you only have to be disabled for 12 months. 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

Think about the job of bridge tender on a not very busy waterway. The bridge tender has a recliner chair in his room at the bridge. He sits in his recliner and when a boat comes along, a few times per hour, he flips a switch to raise the bridge. He is allowed to stand or sit or lie down as he chooses. Most claimants who go to hearings in front of Administrative Law Judges are able to do the bridge tender job. But that doesn't mean they are not disabled. It just means that virtually everyone can do something. There is some sort of job for almost everyone.

This is important because 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 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, sit, walk, lift, 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 lawyer will be able to look at the rules and figure out what you've got to prove to win your case. 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 an easy sit-down job or even a job where you're allowed to alternate sitting and standing during the workday. You've got to prove this even though you might not be hired for such a 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. 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, and 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 and your lawyer at the hearing. Although your lawyer will remind you if you forget something, it's best if you can answer all questions thoroughly yourself. Otherwise, it could look like your lawyer 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; and

6. Your daily activities.

Work and Educational History

For work history, you will be asked to describe the job duties of your last job and all significant jobs you've had during the past 15 years. The judge will want to know how much weight you had to lift on each job and approximately how much time during the workday that you spent sitting, standing and walking on each job. The judge will also 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 a job interview in which people often have a tendency to try to “puff up” their job skills. Just state the straight facts.

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.

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 lawyer before your hearing. If you have recently completed some schooling that might qualify you for a skilled job, be sure your lawyer knows 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 lawyer'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, how well the medications work 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.

You will not be expected to explain technical medical things to the judge. Unless you are asked, it's better not to even try to explain what your doctor has told you, what your friends have told you or what you have read about your medical problem unless you have first cleared it with your lawyer. 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 with the same impairment can and do work. 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 as 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 month or 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." Instead, 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; however, 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 during a hearing that his or her pain is at a 10 level is dishonest because judges think there is no way a person could be at a hearing with pain that bad.

Estimate Your 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. Therefore, 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 to 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 lawyer shows on television, wipe such things from your mind. In court hearings, lawyers are always advising people, "don't volunteer." What lawyers mean, of course, is don't give any examples or details, wait for the lawyer to ask. In Social Security hearings, this rule does not apply and, indeed, if you don't "volunteer" information, you will not be giving the judge the necessary information to decide your case.

Below are some examples. You decide which testimony is best. The person who has been advised by a lawyer 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 two 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 problem with the way questions are asked about how long you can stand, how much you can lift, how far you can walk, and so forth. Judges always ask the question in just this 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?" If you interpret the question this way and say “one hour,” without any explanation of your answer, you’re likely to lead the judge to think you can stand much longer than you really can on a job. What the judge needs to know 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, repeating this several times during an 8-hour workday.

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. For example, explain that 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 may look at a clock and write down that the claimant had been sitting there for 40 minutes when that question was answered. Thus, the judge could conclude that the 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.

Some people testify that after sitting for a period of time they need to shift in the chair; however, this is a point barely worth making since all of us shift in our chairs. There is virtually no vocational significance of needing to shift in a chair; a person can shift and go right on working.

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.

It is useful to provide information about what you need to do after sitting for a while. Can you sit for a while and then stand up, stretch, and sit back down and continue working? Do you need to alternate sitting and standing? Can you alternate sitting and standing at a work station all day long? Do you need to walk around after sitting or standing in one place? If so, how often do you need to walk around? How long do you need to walk around each time?

Most jobs give breaks from work every couple of hours. Do you need extra breaks from work? What do you need to do on such a break? Sit? Walk around? Lie down? Sit in a recliner? How often during the workday do you need such breaks? How long should each break be?

The judge or your lawyer may ask you how long out of an 8-hour working day you can sit. What the judge needs to know is the total length of time during an entire 8-hour working day that you are capable of sitting, even though sitting is in short stretches. You're going to have to think about this before the hearing so that you can give a realistic estimate. The judge may also want to know the same about standing.

Sometimes a problem for testimony comes up if you have good days and bad days. For example, on good days, you might be able to sit, 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.

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

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 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 lawyer 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 lawyer prior to your hearing; but there are a few things that we can say 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; however, 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 for you to be willing and able to describe any emotional problems you have 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 also be asked about your ability to do the following: understand, carry out and remember instructions, make judgments, 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, 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. Here's 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, lack of opportunity for learning new things, little opportunity 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.

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 and staring at a television set is doing something; sitting and staring out the window is doing something; sitting and 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 cleans 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; he never goes to the store alone; and he always takes along his 15-year-old son to carry the groceries. He also failed to mention that he sits in his recliner several times during the day to relieve the pain in his back. 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.

Describe how long you do an activity 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 can’t accomplish without help from other people—and tell who those other people are and what help they provide.

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 lawyer. For example, don't use the line that starts with "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 any of these, 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 that is not the issue in a Social Security disability case. 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. Sometimes claimants bring up things on their own only 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 tell the judge what an honest person you are*. Many genuinely honest claimants think that they need to tell the judge just how honest they are. "I am an honest person," such a claimant may say. Don't say it. Your honesty will be demonstrated by your truthful testimony on relevant matters. Telling the judge you are honest may backfire.

7. *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 lawyer.)

8. *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 not relevant.

(b) The lack of work in your local area is not relevant.

(c) Hiring practices of employers are not relevant.

(d) Technological changes in the industry in which you have worked are not relevant.

(e) Cyclical economic conditions are not relevant.

(f) The fact that there are no job openings is not relevant.

(g) The fact that you would not actually be hired for a job is not relevant.

(h) The fact that you do not wish to work at a particular job is not relevant.

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. If any of these three things apply to your case, be sure to bring them to the attention of your lawyer before the hearing.

1. Think back over the 15 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 lawyer.

2. If you received unemployment compensation at any time during the period that you are claiming to be disabled, make sure your lawyer 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 lawyer 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.

One More Thing

If you have a cell phone with you, don't forget to turn it off before the hearing starts.

What Your Lawyer Does

Your hearing will be over in about an hour, maybe less. Hearings seldom take longer than an hour and one-half. If you're well prepared because of this memorandum, your lawyer may not have to ask many questions at the hearing. In hearings with judges who like to ask most of the questions, the only time your lawyer needs to ask you anything is if your lawyer thinks that your testimony wasn't clear enough or there are issues that were not developed. In fact, it's better that way. The more information you give in answer to the judge's questions, the better it is for your case. Your case will be presented naturally and 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 lawyer testifying rather than you. Your lawyer will, however, ask questions of any witnesses you bring along to the hearing; and it is the lawyer's job to question any expert witnesses called by the judge.

The most important part of what your lawyer does usually takes place outside the hearing. That is, your lawyer gathers medical evidence, gets reports from doctors, does legal and medical research, and prepares witnesses to testify.

Your lawyer may make a closing argument either in writing or at the hearing. The best-developed cases, however, don't need a closing argument. If a case is well developed with medical evidence and with the claimant's testimony, a closing argument is often not necessary.

There is one thing that lawyers cannot do, however: They are 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 lawyer. If you're lucky enough to have the judge issue a bench decision at the hearing, the short written bench decision summary usually comes within a week. Otherwise, don't expect a decision from the judge for at least a month—two

months is more common. Sometimes it takes even longer for a hearing decision to be mailed to you. Some judges are very slow.

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 lawyer can do that. But your lawyer can't do much more to speed things up.

Attorney Fees

If your fee agreement with your lawyer calls for the attorney 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 attorney fee and, assuming neither you nor the judge objects to the fee, SSA will send that money to your lawyer. Although it's your money, you're not involved in paying it. But you will have to pay expenses directly to your lawyer if your fee agreement calls for you to reimburse your lawyer for expenses.

When You Get Your Decision

When your decision arrives, make sure that your lawyer received a copy. Your copy and your lawyer’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 lawyer may not be sent a copy of the decision. When this happens, your lawyer doesn’t know what is going on in your case. Your lawyer won’t know, for example, whether the favorable decision contains an error that needs to be corrected right away; your lawyer won’t be able to monitor payment of your benefit; and your lawyer won’t know if you received a denial decision that needs to be appealed. So, win or lose, call your lawyer’s office when you get a decision to find out if your lawyer received a copy.

If You Lose

Sometimes good, 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 with your lawyer right away 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.