

## SOCIAL SECURITY PROTOCOLS

### 1. Introduction

Almost all Health Justice Clinic students will handle a disability case. These cases can take a long time from start to finish, often two years or more. So most cases will be handled by a series of students, each of whom will handle different parts of the case. When you receive your disability case, it can be anywhere along the spectrum from beginning to the end.

In these pages, we go through all the steps involved in handling a disability case, but you will probably not do all of them. **It's important that you understand the complete process, though, so you can have an appreciation of what the client and previous students have done, and what will happen after you pass the case along to the next student.**

### 2. Overview of the Clinic's Social Security case process/procedures

**How we get our cases:** Our disability clients come to us in a variety of ways. Some are referred to us by a social worker, case manager, or medical provider. Sometimes the initial call is from the professional and sometimes from the client. We screen our cases before we agree to represent a client. Most of this part of the process is done by Allison, and Hannah. We gather and review medical records, the social security file, and other pertinent information. We review that information and decide whether the client has a reasonable shot at getting benefits, whether it is logistically feasible to work with the client (e.g., whether we can figure out a way to meet in person with the client), and whether the work will be educational.

**Beginning our case work:** If we decide to accept the case, we will officially open a file and assign the case to a student. You may be assigned a case that is new to the clinic. As the first student on the case, the first part of your job will be formalizing our relationship with the client and submitting necessary documents to Social Security, including an "Appointment of Representative form" (Form 1696). Also at the beginning of the case, you will have a lengthy in person interview and meeting with the client, which you will summarize in great detail in an opening memo. Your interview notes and opening memo will be an important foundation for our work in the case, and each student following you will return to these documents at various stages in the case.

In the early stages of the case and throughout the case, we will be gather medical and other evidence and digest it carefully. We call this "charting" the record. We obtain the Social Security Administration's electronic file and review that carefully. We repeat this set of tasks at each level of the appeal process until the case is finished.

**Medical Research:** Each student who works on a case must gain a thorough understanding of the client's medical conditions. The importance of this cannot be overstated. It is simply not possible to do an adequate job on a disability case if you don't understand the medicine and science in the case. So, early in your work on the case, you must do whatever medical research is necessary to be sufficiently knowledgeable to understand how the medical facts fit into the disability law, to develop a theory of disability, and to have an intelligent conversation about the case with your client's physician or other medical provider.

We have many medical resources in our office library and there are copious medical resources on the web. The Duke Medical Center Library website is a good resource.

***Being the second, or third, or fourth student on the case:*** Because the social security appeals process can take years, we often have pending for years. Some of you will be assigned cases that have been handled by one or more students. You may receive a file that consists of several binders/documents in Clio, with hundreds of pages of materials. This can be a bit overwhelming, but don't panic. The advantage of receiving an older case is that you will have a well developed record right at the start. Rather than spending hours charting records, you can pour over the chart and records to gain a detailed understanding of the case early. If you do get a large case file, don't delay in reading it carefully. Start with the transfer memo, case notes, opening memo, and any other memos to the file. Then read the medical chart. Read the medical records themselves. Read the electronic Social Security file, which will be in CLIO. Take notes for yourself as you go along. Pause and do medical research as you go so that you will understand what you are reading.

***Developing a theory:*** One of the most important and intellectually challenging parts of working on a disability case is developing a theory of the case. By "theory" we mean a way of viewing the law and facts together that results in winning the case. Once you have a theory, you will present it to the client's medical provider(s) to try to get their opinion about whether it is valid. Once you have a theory that the provider can endorse, you will draft a statement for the provider to sign. You will also interview other witnesses (the client, people who know them, perhaps an employer) and prepare statements for them to sign.

***Presenting/Arguing our Theory.*** We will present our theory and supporting evidence to Social Security. This will take a different form depending on where the case is in the process. If your case is at the initial or reconsideration level, you will submit your theory and evidence to the Disability Determination Service. At this level, you present your theory/argument informally, in a brief letter. If your case is at the hearing level, you may present your theory in a lengthy memo in support of a Request for a Decision on the Record. This is a kind of "summary judgment" in which you ask the Administrative Law Judge to approve your client's case based on the evidence in the file, without the need of a hearing. The final way in which you may present your theory to Social Security is in a hearing in which you present testimony from your client and possibly other witnesses. Where you present your theory will vary depending where your case is when you are assigned to it. But in most instances, an important part of your work on a disability case will be developing or refining, and presenting your theory.

***Maintaining comprehensive medical records and charting.*** Every student is responsible in a disability case for making sure we have the most recent medical records and "charting" those records. You should always be alert to how up-to-date our records are. If the most recent records are more than three months old, let our work study student(s) know and ask them to request the records, giving them the dates needed and from which medical facility. It is more difficult than you might imagine to make sure that we have all of a client's medical records **It is critical to make sure that we have records from all sources, that the records are regularly updated, that we receive the records we've requested, and that once the records are**

**received they are charted and uploaded to SSA by your supervising attorney via ERE.**

The rest of this document provides detailed case handling procedures.

## **PROTOCOLS**

### **I. Initial Steps: Case Screening & Acceptance**

Most initial calls from disability applicants are screened by Sandra, Allison, and Hannah. We use the Disability Telephone Screening Sheet to gather information that will help us decide whether to accept a case. You may be asked to do a telephone screening of a disability inquiry. You will do a brief phone interview to complete the Disability Screening Sheet and pass the information on to Hannah or Allison.

In our screening, the most important thing to find out is where the caller is in the application/appeals process and whether there are any approaching deadlines for appeals. Some of the important pieces of information that we record on the Screening Sheet are:

1. What programs has the client applied for? Social Security/SSI or both?
2. At what local Social Security office did the client apply?
3. Was the client turned down after the initial application? If so, when?
4. Did the client appeal the initial denial? (This is called asking for Reconsideration.) If so, when?
5. Was the client's Reconsideration turned down? If so, when?
6. Has the client appealed the Reconsideration decision? (This is called asking for a hearing.) If so, when?
7. Has a hearing been scheduled? If so, when?

Depending on the answers to the above questions, we will take the following steps:

**1) If the client has not yet applied for disability benefits**, we tell the client to go to his/her Social Security Office (most counties have one), and apply for benefits. We do not generally represent clients at the initial application level, but make exceptions from time to time.

**2) If the client has not yet been turned down after the initial application**, we usually tell the client to call us back if s/he is denied. Advise the client that the denial is appealable, and we may be available to assist. **The Durham Social Security Office is located at 3004 Tower Blvd., and their phone number is 541T5443.** The SSA national toll free number is 800P772P1213. We sometimes make exceptions, for instance when a client is especially sick or lacks the ability to adequately pursue the application independently.

**3) If the client has been denied and has not filed for Reconsideration or Appeal**, first find out what the date is on the denial letter. Advise the client that s/he has **60 days** from when the

letter was received to appeal the decision by filing a **Request for Reconsideration** or **Request for Hearing**. (Social Security presumes the date of receipt is 5 days from the date of mailing.) The appeal can be done online or by calling the Social Security to get a form which must be mailed to the client's local (district) Social Security Office. When we do appeals, we do them online to expedite the case.

Fill out an intake form as well as a Disability Screening form, and save them to CLIO. Allison or Hannah will assess the case and determine whether to gather more information or immediately dispose of the case. Be sure that you record when the client's claim was denied. **It is imperative that we make sure that the client understands the appeal deadline, even if we do not accept the case.**

**Appeal Forms:** Along with the Request for Reconsideration or Request for Hearing form, the client will also need to submit multiple medical releases (SSA form 867) and a form called **Disability Report Appeal**. This form asks questions about the client's medical condition since the time of the initial application. If we accept the case, we need to help the client submit the appeal documents within the 60 day deadline. The Disability Report form is available in fillable pdf format on the Clinic web site. However, to expedite the client's case, we submit this form online through SSA.gov. We use the pdf form for taking notes necessary for the online submission process. We will give you details of how to do that. **If you are asking for reconsideration or a hearing online, SSA will not consider the appeal to have been filed until all forms have been completed online.**

If you are assigned a new disability case, **make an appointment for a full disability interview**. There are two parts to the disability interview. The first gathers information about the claim, medical history and functional abilities. The second part collects educational and work history. In most instances, you will only be able to complete the first part of the interview in the first meeting. It will take at least an hour and a half. The second part of the disability interview can be done at a second meeting or over the phone. It should take no more than an hour.

Ask the client to bring any letters received from Social Security, his or her medications, the names and addresses of his or her medical providers and any medical reports the client might have. Be prepared to have the client sign multiple general medical releases as well as facility-specific releases. At the interview, get the denial letter (or a copy) from the client and any other information from SSA in the client's possession. All documents should then be scanned into CLIO.

After the first interview, write a detailed opening memo summarizing the disability interview. **Be as detailed as possible**, as your opening memo will be referred to throughout our work on the case. After the second interview, supplement the opening memo with the education and work information.

The Reconsideration is a "paper review." There is no hearing. Generally, our role at this stage is to ensure that all the relevant medical records are in the Social Security file and sometimes to obtain an affidavit/statement from a medical provider supporting the client's case. After the

appeal has been filed, you can call Disability Determination Services (DDS) and find out who the claims representative is on the case. If you know that you will have additional medical records to present, let the claims representative know that and ask that s/he not make a decision on the file until you have had a chance to submit the records. Ask the claims representative how he or she would like you to submit additional records and evidence and note this in Clío.

At the Hearing level, our role is to assure that all the medical records get to Social Security, obtain an affidavit/statement from a medical provider, social worker and other third parties supporting the claim and a functional capacity questionnaire from the provider. If we have additional documentary evidence, such as records from Vocational Rehabilitation or a social worker, we will submit that to SSA as well. We submit a legal memorandum in support of the claim, and represent the client at the hearing before the Administrative Law Judge. This will involve the presentation of a direct examination of the client, (and occasionally, but rarely, a direct examination of any other witnesses). It will also involve the cross-examination of either a medical advisor or a vocational expert produced by the Social Security Administration.

**5) If the client has been denied by the Administrative Law Judge**, advise the client that the decision is appealable to the Appeals Council. The Appeals Council sits in northern Virginia and reviews cases from the entire country. Let the client know that favorable decisions from the Appeals Council are very rare and take a long time. The deadline for filing a **request for Appeals Council review** is 60 days from the receipt of the ALJ's denial.

We sometimes represent a client at the Appeals Council. This is a paper review of the case. Normally, we would review the file and the decision from the ALJ, and write a memorandum of law on behalf of the client in an attempt to have the ALJ decision reversed.

**6) If the client has been denied by the Appeals Council**, the case is appealable to the Federal District Court. Discuss with your supervisor to determine what procedures are appropriate.

## **II. REPRESENTING A CLIENT:**

Once we determine to accept a case, the Supervising Attorney will change the case status to "Open" on CLIO and Sandra will prepare a file for you. For Disability cases, we keep our files in looseleaf binders which have a specified set of tabs. You may need to add additional tabs based on the information in your case.

Pertinent information should be entered into the case record in CLIO.

Here is what you will do in handling the case:

### **A. 1696, Appointment of Representative**

If we decide to represent a client, a form 1696, Appointment of Representative must be signed by the client and filed with SSA. Because the Social Security appeal takes so long, all supervising

attorneys should be listed on the form, with Hannah listed as the main representative, unless another attorney will be supervising the case. The client and the supervising attorney must sign the form before it is submitted to SSA.

## **B. Request and Summarize Medical Records**

It is essential that we gather all of the client's medical records. Be sure to get a complete list of all of the client's health care providers from the client – we will need a signed medical release form for each facility. Mistakes on the medical release forms will delay receipt of the records, and thus your ability to make progress on your case, by many weeks. Some providers will accept our general medical release, but many hospitals and clinics require their own release form, so please check with your supervising attorney or call the provider to find out what they require. Many of the facility-specific releases are available on our website. At some facilities, when requesting psychiatric or substance abuse records, you must send a separate letter requesting this information. Also, many medical release forms have boxes which *must* be checked off or initialed by the client. Before having your client sign any releases, make sure that you understand what the form requires and that you give the client clear and thorough instructions about what and where to sign. **Do NOT have the client fill in the name of the provider on the general release form – have them leave this field blank, and also do NOT have the client fill in ANY DATES – the dates of records requested should be left blank on the form, as should the date the form was signed. We only want signatures (and initials and/or boxes checked where applicable)- NO DATES.**

After you have gathered the signed releases, scan them and save them in CLIO. Let our work study student(s) know what medical records you need requested and make a note in Clio that you have made this request. You will need to let the work-study student know what dates you need and from which facilities/providers. **Make sure that you do not request records we already have.**

If the records are not received within a few weeks, let your supervising attorney, and the work-study student who made the original request, know. Or we may ask you to call to check on the request. Also, when you do receive records, take a look at them to make sure you got everything you were expecting. **It is critical that you follow up to ensure that we have all of the records.** If we receive a bill with the records, simply give it to Allison or Hannah.

When you receive medical records, please upload them to CLIO (if a supervising attorney or work study student has not already done so – check first), using the code “MEDR” (Medical Records). Medical records files should be saved in the following naming format: facility and dates of records without any commas. (E.g., “UNC 04012014-05152015” or “ECU 01072013-02052015”). Files need to be named this way because ERE (the SSA site where we upload records) will only accept documents that do not have characters in the file names. This naming convention also makes it easier for someone after you (or for you) to find records from a certain facility and date. If you receive paper records, after scanning the records, three-hole punch them and place them in the binder. Additional binders may be necessary. Place the records behind a divider tab that is labeled for the provider. If you need divider tabs/labels, let your supervising attorney know or request them from Sandra. If you received the records electronically, you need not print them, although you should feel free to print

records if it is helpful to you when reading/charting them.

Once you have started to receive the records, you should create (or update) a chart that lists the records chronologically and summarizes the symptoms, diagnosis and treatment. Get the medical chart template from our website. Charting medical records is a very time-consuming task, so don't wait until all the records have arrived to get started. When you begin charting your records, get some guidance from your supervising attorney. It's usually a good idea to show your supervising attorney the first few entries to make sure they are at an appropriate level of detail. Refer to the "Guidelines for Charting Medical Records" as you chart. Update this chart as you receive all of the records.

In addition to charting the records, you should create a medication list and if the client has HIV, a HIV Labs list. The medication list is a place to track our clients' medications and their purpose. The HIV Labs list will enable us to quickly review the CD4 and viral load levels.

Often, the medical records will be hard to read and difficult to understand. There are several resources to help you decipher the records. There are many medical dictionaries readily available online, as well as lists of common medical abbreviations and acronyms.

### **C. Supporting Affidavits:**

Develop a list of people who are potential witnesses for the client. These are people who can provide useful information about the client's functional limitations. The list may include social workers, case managers, former employers, family members, friends, and the client.

The first step is to develop questions for the witness after reviewing the client's file. Your supervising attorney will direct you to affidavits prepared in other cases we have handled. After developing your questions, interview the witness. Third, draft the affidavit. (If your witness is a social worker, you may want to have the witness set out and support your theory about the case. See the paragraphs below about formulating a theory and doctor's affidavits.)

Refer to the handout, Guidelines for Drafting Affidavits and Sample Affidavits, in these materials, on the website, and in a binder on the bookshelf in our pod. After your supervising attorney has approved it, send a draft to the witness with a letter explaining that they should review the affidavit. If the witness would like to make any changes, they should call you ASAP. If not, you should print the affidavit on bond paper, get it to the witness, and help arrange to have the affidavit signed, notarized, and mailed back to the clinic.

### **D. Request/Review Social Security File**

We need to obtain a copy of Social Security's file. If the client's claim is at the initial or reconsideration phase, you will have to request the file from SSA and they will (possibly, if you are very lucky) send it on a CD. Once a hearing has been request, Social Security files are maintained electronically (ERE). Before the file is electronic, we request a copy of the file by sending a letter, with a blank CD and a signed SSA 3328 form, to the client's local SSA office. You may have to follow up with the local SSA office to make sure you get the file on CD. If your client has already requested a hearing and we have submitted a 1696, your supervising attorney

will be able to download the SSA file from ERE and save it as a PDF. Please note that we save an OCRd version of these PDFs, which means that you can search for text in the document. OCR does not pick up every character correctly, but is a very helpful tool in finding things quickly.

When you review the SSA file, you must carefully compare the file with the records that we have. **Make a list of medical records that we have that SSA does not.** These records should be submitted to Social Security. Your supervising attorney will upload the records to SSA (or have them sent to DSS) for you after you inform her that they need to be uploaded/sent to DDS. Also please note any medical records that SSA has that we don't and discuss with your supervising attorney whether to request additional records from that provider.

### **E. Formulate a Theory**

After all of the medical records are received, complete the medical records chart. Then develop a theory about how the client meets the listings or otherwise meets the Social Security standards for disability. Your supervising attorney will brainstorm with you about possible theories. Your theory should follow the five steps of the sequential evaluation.

As you work on developing theories, you may realize that additional evidence is needed to support your theory. For instance, the theory you are contemplating may require certain results on a medical test that has not been administered. In such a case, we may be able to ask the client's doctor to refer the client for the necessary test. It may also be possible to ask Social Security to pay for additional evaluations that might establish the client's disability. In some cases, the Clinic will pay to have the client evaluated by a specialist to develop essential evidence. Other evidence you might need includes school records and records from vocational rehab. Please discuss any ideas for additional evidence with your supervising attorney.

### **F. Medical Affidavits/Statements**

You also need to obtain affidavits from the client's physicians/providers. In these affidavits your goal is for the physician to describe the client's medical problems and to set out and support your theory about how the client meets the listings. When you are ready to start working on affidavits, ask your supervising attorney to point you to some samples. Then, develop questions for the doctor based on the client's medical records and your theory about the case. If the client has seen several doctors, you may decide to ask one to review the client's records and formulate an opinion about the entire chart. We also have special questionnaires addressing the client's physical or mental functioning, which we sometimes send to doctors to complete. However, **never send a questionnaire to a provider without first speaking with provider and getting permission from your supervising attorney.** If a medical provider completes a form regarding our client unfavorably, we are obligated to submit that opinion evidence to SSA – so we never send any type of questionnaire unless we are sure that it will be favorable to the client.

You need to allow plenty of time to make contact with a medical provider, especially if a hearing is already scheduled. Some providers are difficult to reach, or they may be going on vacation, or travelling to a conference, etc. You will want to interview the doctor (usually by phone). Call the doctor's office and find out what the best way to contact them to set up a

phone appointment is. Many doctors have assistants who schedule for them, while others prefer that you email them directly. You will need to obtain the doctor's credentials and find out how long the doctor has been treating your client. CVs are available online for many providers, but if not, you should ask the provider to email you a copy. You will also need to explain the relevant Social Security standards to the doctor and ask if your theory is supportable given the client's medical condition. The doctor can sometimes help you formulate a new theory if your current one isn't supportable. Finally, based on your conversation with the doctor, draft a statement.

After your supervising attorney has approved the draft affidavit, send or e-mail the affidavit to the doctor asking them to review it. If the doctor would like to make any changes, they should call you ASAP. You should make the appropriate changes and send it again. As a rule, avoid having the doctor make the changes themselves; the doctor might inadvertently change some language that is essential to supporting the claim. If the provider prefers to edit the statement directly, of course they can do so and if we have any concerns we will discuss this with the doctor – of course, you would need to discuss this with your supervising attorney first. Once the statement is final, the doctor should sign it and return it to you.

## **G. Evaluation of the Client's past work**

In order to prepare arguments for steps 4 and 5, we must carefully assess the client's past work and determine they are unable to return to it. We also need to determine whether the past work is "relevant" – that is, it was done recently enough (within 15 years); long enough for the client to have learned it; and that the work was performed at the Substantial Gainful Activity ("SGA") level.

First, we must identify the client's past work. Use the information collected in the disability interview as well as information in the Social Security file to make a list of the jobs the client held in the last 15 years. Search the Dictionary of Occupational Titles (DOT) to try to find the job or jobs that seem closest to what the client described. The DOT is available in hard copy in our office, and an electronic copy is linked from our website.

When you have identified the likely past jobs, copy the entire DOT entry and review the jobs with your client to determine whether you have the right ones. In most cases, you will need to do this orally. If your client is particularly well educated, you may be able to send the DOT description to your client for review. Once you have come up with what you and the client agree are the past jobs, verify how long the job was done and how much the client earned. Determine if any of the jobs can be excluded as past *relevant* work.

At Step 4, you must establish that your client could not do the job as the client performed is *or* as the job is generally performed in the national economy (i.e., as described in the DOT). Develop your theory as to why the client is no longer able to perform those jobs. You may need to refer to the publication, "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" to learn more about specific physical demands of a particular job. Find out from the client specifically which physical and mental demands they can no longer fulfill, and why.

## **H. Draft Memorandum in Support of Claimant**

Prior to the hearing, you will need to draft a legal memorandum to the Administrative Law Judge arguing our theory as to why our client is disabled. The memo will describe the client's educational background, work history, health problems and then our argument as to why the client meets the listings or is otherwise disabled. Your instructor will direct you to sample memos.

Note that in some cases, we will be asking for a decision on the record, well before a hearing is scheduled. This is akin to summary judgment. We ask for such a decision in particularly strong, compelling cases.

## **I. Prepare Direct Exam for Client for Hearing**

At the hearing, you will do a direct examination of your client and any other witnesses. Prior to the hearing, draft the questions you will be asking. Basically, you just want to walk the client through the memorandum that we submitted on their behalf. Write basic questions that address their work history, health, daily activities, etc. You will need to plan to get the client to give a lot of detail. Your supervising attorney can refer you to questions prepared in other cases, to give you some idea of how to proceed. It will also be helpful to refer to some of the Social Security practice guides in the Clinic library. You will need to meet with your client a day or two before the hearing to go over the direct with them.

## **J. Prepare Cross Exam for VE**

If there will be a VE at the hearing and you will be doing the cross-exam, you will need to prepare for this as well. You and your supervising attorney will decide whether you or the supervising attorney will conduct the VE cross.