



Social Security Overview:
The Application and Appeal Process

with

NASSAU SUFFOLK LAW SERVICES COMMITTEE, INC.

Presented by Sarah Kupferberg, Esq.





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Please keep your microphone muted.

Please put questions in chat. Please do not put personal questions in chat.

There will be polls throughout and a survey at the end.

Thank you!

Housekeeping

Who we are and what we do...



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- Over 6,000 legal cases each year
- Direct representation, phone consultations
- Brief service or referrals
- Offices in Hempstead, Islandia, Riverhead
- Case handling staff includes attorneys, paralegals and social workers
- Partnerships with Community Agencies



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Office Locations

Hempstead:

1 Helen Keller Way 5th Fl
Hempstead NY 11550
(516) 292-8100

Islandia (Western Suffolk):

1757 Veterans Hwy Ste 50
Islandia NY 11749
(631) 232-2400

Riverhead (Eastern Suffolk):

400 W. Main St Suite 200
Riverhead, NY 11901
(631) 369-1112

Nassau Suffolk Law Services

Programs



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Family

- Domestic Violence Family Court Project (Suffolk)
- Family Law Unit (Suffolk)

Disability & Health-Related Projects

- HIV Unit
- Mental Health
- ICAN - Advocates in Managed Long-Term Care
- Education and Disability Rights (Special Education and Rights of Developmentally Disabled)
- Disability Advocacy Project (SSD/SSI Appeals)

Nassau Suffolk Law Services

Programs (continued...)



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Housing

- Civil Unit (Eviction Prevention)
- Foreclosure Project

Other

- Consumer Debt
- Veterans Rights
- Re-Entry Project
- Public Benefits
- Adult Care Facility Unit
- Senior Citizen Project (Nassau)
- Pro Bono Project (Suffolk)
- Volunteer Lawyers Project (Nassau)
- Community Legal Help Project (Suffolk)



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Legal Support Center for Advocates:

Only advocates please call (631) 232-2400 for assistance:

Sharon Campo - x3368 Cathy Lucidi - x3324

- Provide Technical Support to Advocates
- “Advocates” include legislative staff, social workers, outreach workers, medical personnel, and guidance counselors
- Host Community Trainings
- Publish Newsletters

Visit our website!



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- All About Our Programs
- Sign up for our “Legal Lessons”
- Trainings
- “Self-Help” Resources
- Other Events
- www.nslawservices.org



Announcements: Upcoming Presentations



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Save the Date Upcoming LSCA
Trainings:
Overview of Dignity for All
Students Act- 4/27 at 1pm – Zoom
registration will be sent out shortly
Overview of Mental Health
Housing – date TBD in mid to late
May
Save the Date Learn About Law
Services Presentations:
4/19 at 1:30pm Featuring Suffolk
County Pro Bono Project and
Community Legal Help Project
[https://www.nslawservices.org/important-
dates/](https://www.nslawservices.org/important-dates/)

Announcements: EDCAP partnership



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Nassau Suffolk Law Services is a partner with the Education Debt Consumer Assistance Program (EDCAP) of the Community Service Society. We will be providing community presentations, direct representation, and advice and counsel on higher education debt including: Student loan or higher education lawsuits; Determining best repayment options; Accessing loan forgiveness, cancellation, and discharge programs; Getting out of default to prevent wage garnishments, social security offsets, and tax intercepts; and/or Resolve issues with loan servicers and lenders.

Long Island clients contact (516) 292-8100 to be screened for legal services OR New Yorkers contact EDUCAP's Helpline at 888-614-5004 (M-F 9am-4pm) to find out how EDUCAP can help you

Just a Note...



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Nassau/Suffolk Law Services makes every effort to keep legal educational materials up to date. The information contained in this material is not legal advice.

Legal Advice depends upon the specific facts of each situation. These materials cannot replace the advice of competent legal counsel.

Presentation Overview



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1. Disability Advocacy
Project Guidelines
2. The various Social Security
disability benefits
3. The Social Security
disability definition
4. The application and appeal
process
5. Q & A



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Social Security Overview: The Application and Appeal Process

Presented by Sarah Kupferberg, Esq.

Disability Advocacy Project

- Represent low-income disability claimants at all levels of appeal
- Disability appeals
- Appeals based on non-disability factors
- Continuing Disability Reviews
- Age 18 reviews
- Generally limited to those on Safety Net Assistance
- Some cases for claimants who get Medicaid but not cash Public Assistance



Supplemental Security Income

- Needs based- Income and Resource limits
- Resource limit of \$2,000 for individuals; \$3,000 for couples
- Must meet Social Security's disability criteria
- Paid benefits from the first full month after the date of application
- No retroactive benefits for time prior to the application or the month you apply
- Benefits suspended for incarceration/institutionalization
- Benefits terminated if suspended for 12 months or more



Social Security Disability Insurance

- Benefits to disabled or blind individuals who have paid Social Security taxes
- Primary insurance amount (PIA) is based on claimant's FICA taxed earnings
 - If the PIA is under the SSI Federal Benefit Rate, claimant may be eligible for SSI and SSD
- Date Last Insured (DLI) is the date the claimant is last eligible for SSD qualification
 - Usually, 5 years after federally taxed work stops
 - To be currently insured you must have worked 5 of the past 10 years (20/40 quarters)
- If someone applies for SSD after DLI has passed, they must show that the onset of disability was prior to the DLI



SSD Continued

- Retroactive payments can be made to claimants for the time between the alleged onset date and the date of application
 - Up to 12 months
 - 5 month waiting period
- Eligible for Medicare after 24 months
- Benefits may be available to a legal spouse (widow, divorced, or current)
- Benefits available to dependent children



Disabled Adult Child Benefits

- Available to an adult, who has a disability that started prior to age 22
- Can collect under a parent's Social Security Record
 - Must have eligible disabled, retired, or deceased parent
- Adult child must:
 - Be 18 or older
 - Be unmarried
 - Meet the definition of disability
 - Have never made substantial earnings



Social Security “Disability” Definition

- “The inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months”



Five Step Process

1. Is the claimant working

2. Is the claimant's condition Severe

3. Does the condition meet a bluebook listing

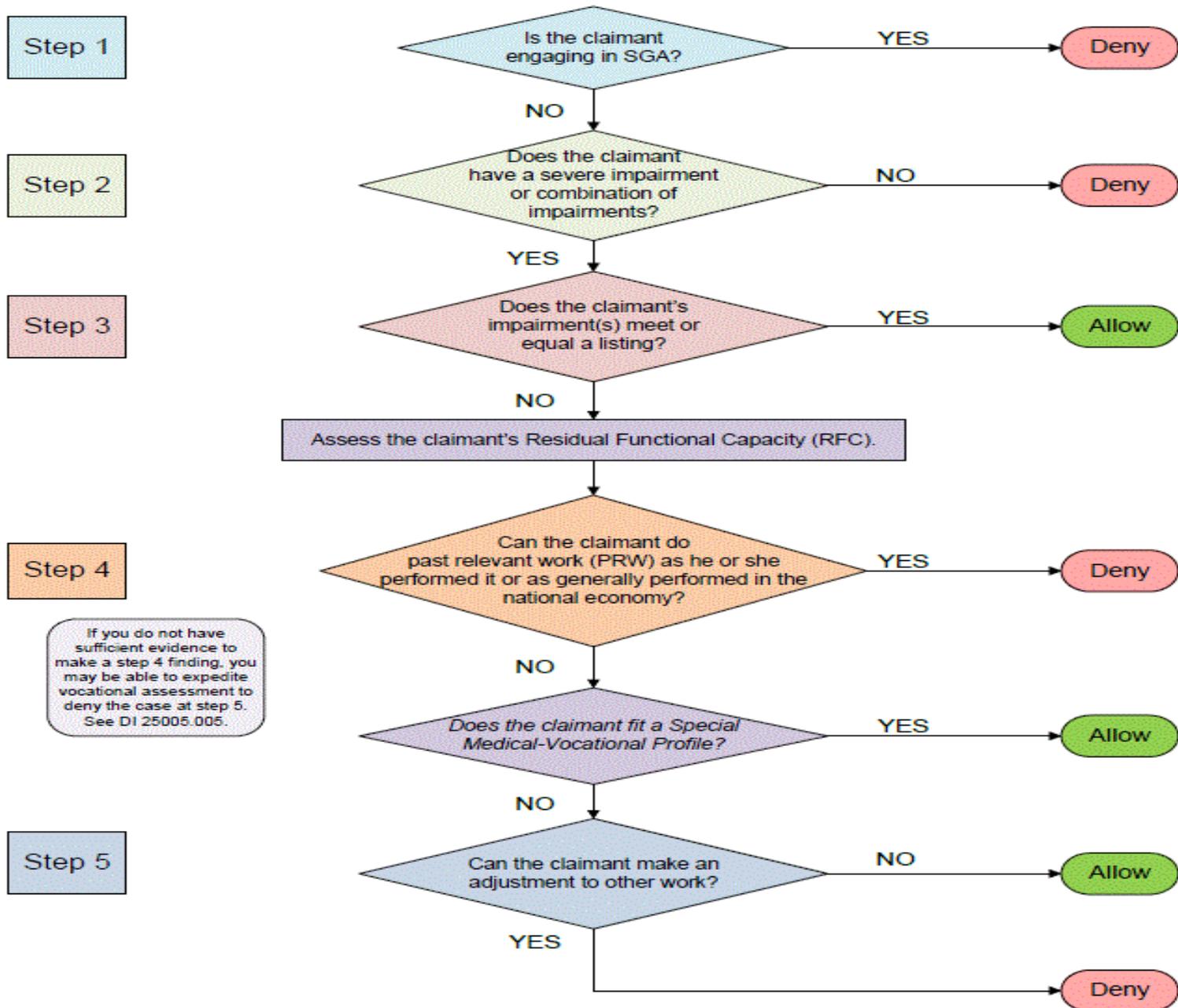
4. Can the claimant do "Past Relevant Work"

5. Can the claimant do any work in the National Economy



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Adult Initial Sequential Evaluation



Step 1: Is the Claimant Working

- Include both “on the books” and “off the books” work activity
- Work activity Over Substantial Gainful Activity ("SGA") precludes a finding of disability
- SGA changes yearly
- In 2023 it is \$1470 (\$2460 for blind individuals)
 - Some impairment related work expenses can be deducted from earnings
 - Passive income is not included in SGA but can affect SSI eligibility



Step 2: Is the Claimant's Condition Severe

- Diagnosis by a medical doctor or other advanced practitioner accepted by Social Security Administration (SSA)
- The condition must significantly limit the ability to do basic work activities
- The condition must have lasted 12 months, be expected to last 12 months, or be expected to result in death



Step 3: Does The Condition Meet A Listing

- A list of severe impairments published by SSA:
https://www.ssa.gov/OP_Home/cfr20/404/404-app-p01.htm
- Listings are very specific and cover only the most severe conditions
- If a listing is not exactly met, SSA can decide if the impairment is as severe as a listing
 - Must have a medical expert determine if a condition equals a listing



Residual Functional Capacity Determination

- If a claimant does not meet a listing a Residual Functional Capacity (RFC) determination is made before moving on to steps 4 and 5
- The RFC is the most an individual can do despite their limitations
 - Includes physical and mental health limitations
 - Exertional and non-exertional limitations
- Must be based on the relevant evidence in the record



Step 4: Can the claimant do Past Relevant Work

- Claimant must establish that the limitations prevent them from performing Past Relevant Work
 - Work within the past 15 years
 - That was at the level of Substantial Gainful Activity
 - That lasted long enough to complete the training period
 - Jobs lasting less than 6 months can be unsuccessful work attempts that do not count



Step 5: Can The Claimant Do Any Other Work

- SSA will look to see whether there is any competitive remunerative work in the National Economy that the individual can still do
 - Based on Residual Functional Capacity (RFC), Age, Education, and Past Work Experience
 - Burden shifts and SSA must show that work exists that a claimant can do
- Looking at the Medical Vocational Guidelines
- Complete reduction of the occupational base due to RFC



Medical Vocational Guidelines/ “Grids”

Table No. 3—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Medium Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age	Marginal or none	Unskilled or none	Disabled.
203.02	.....do	Limited or less	None	Do.
203.03	.....do	Limited	Unskilled	Not disabled.
203.04	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
203.05	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.06	.....do	High school graduate or more	Unskilled or none	Do.
203.07	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.08	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.09	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	.....do	.....do	Unskilled	Not disabled.
203.12	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
203.13	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.14	.....do	High school graduate or more	Unskilled or none	Do.
203.15	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.16	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.17	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.18	Closely approaching advanced age	Limited or less	Unskilled or none	Do.
203.19	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
203.20	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.21	.....do	High school graduate or more	Unskilled or none	Do.
203.22	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.23	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.24	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.25	Younger individual	Limited or less	Unskilled or none	Do.
203.26	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
203.27	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.28	.....do	High school graduate or more	Unskilled or none	Do.
203.29	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.30	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.31	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.

Medical Vocational Guidelines/ “Grids” continued...

- See the Rules at <https://www.federalregister.gov/documents/2020/02/25/2020-03199/removing-inability-to-communicate-in-english-as-an-education-category>
- Proving disability becomes easier as claimants age



Borderline Age

Applicants may be able to get bumped into a higher age category if:

1. The applicant is within a few days or months of the next age category
 - Usually within 6 months of the birthday
2. Using the higher age category would result in a finding of disability



Reduction of the Occupational Base

- If the claimant does not “GRID out” then the adjudicator decides whether the Residual Functional Capacity (RFC) precludes full-time competitive remunerative work in the national economy
- How much of a person’s occupational base is reduced by the effects of the exertional and non-exertional impairments
- Whether the person could make a vocational adjustment considering their age, education, and work experience



The Application and Appeal Process

Application

Reconsideration

Hearing

Appeals Council

Federal Court

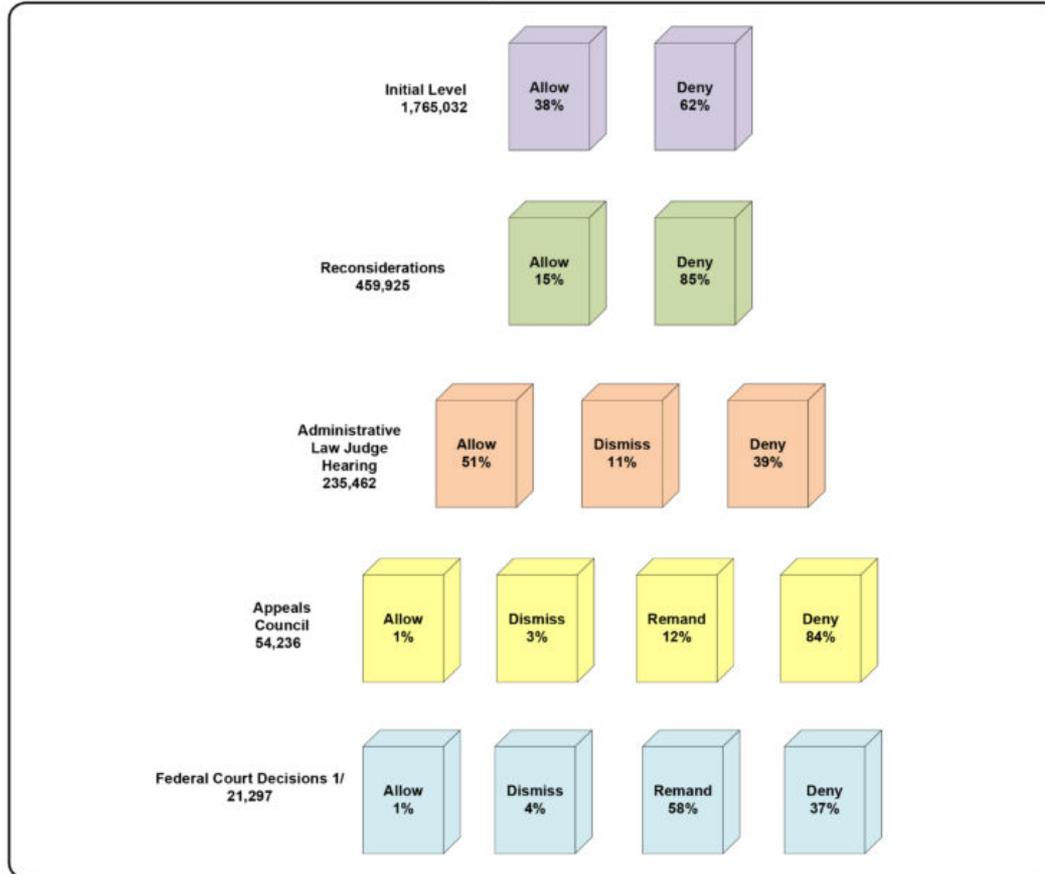


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SSA Waterfall Chart

FISCAL YEAR 2022 WORKLOAD DATA: DISABILITY DECISIONS*

Continuing Disability Redeterminations (CDRs) are not included
except for Federal Court Level



*Includes Title II, Title XVI, and concurrent initial disability determinations and appeals decisions issued in FY 2022, regardless of the year in which the initial claim was filed, and regardless of whether the claimant ever received benefits (in a small number of cases with a favorable disability decision benefits are subsequently denied because the claimant does not meet other eligibility requirements.) Does not include claims where an eligibility determination was reached without a determination of disability. If a determination or appeals decision was made on Title II and Title XVI claims for the same person, the results are treated as one concurrent decision.

1/ Federal Court data includes appeals of Continuing Disability Reviews.

NOTE: Due to rounding, data may not always total 100%.

Prepared by: SSA, ODSSI (Office of Decision Support and Strategic Information)
Date Prepared: January 26, 2023

Application Process



Applications for SSD can be done online at www.ssa.gov



Concurrent SSI and SSD applications can also be done online



SSI only applications do not currently have an online application

There is a protective filing date tool that can be used to request a phone appointment



SSD and SSI Applications can be done via telephone at 1800-772-1213



Can also be completed by walking in to the SSA Field Office



Mailing in or dropping off the required forms



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Application Considerations

- Apply as soon as the claimant becomes disabled
- Claimant must be in medical treatment
- Will need the names of providers, contact information, and dates of treatment
- Should provide hospital visits
- Education records, IQ tests, IEPs if applicable
- Names and dates of medical testing and imaging
- Medication list from Pharmacy
- Work history including unsuccessful work attempts



Reconsideration

- If an application is denied the claimant should request reconsideration
- Must be done within 60 days of the date on the denial letter
- Reconsideration can be requested online at <https://www.ssa.gov/apply/appeal-decision-we-made/request-reconsideration>
- Update Social Security Administration on any new treatment
- If possible, request and submit records to SSA



Administrative Law Judge (ALJ) Hearing

- If denied at the reconsideration, request an ALJ Hearing
- Must be done within 60 days of the date on the denial letter
- Requests can be made online at:

<https://www.ssa.gov/apply/appeal-decision-we-made/request-hearing>

- Update medical information and submit evidence to the Office of Hearings Operations
- Hearings are held in person, by Microsoft Teams, or by phone
- At the hearing, the Judge may have a medical expert and/or vocational expert give testimony
- Legal representation at the hearing level is important



Appeals Council

- If denied at the hearing level a claimant can submit an appeal to the appeals council
- Must be done within 60 days of the date on the denial letter
- A determination will be made about whether the ALJ made mistakes about the law or facts of a case
- The individual could also decide to reapply for benefits but cannot reapply and continue an appeal
 - Keep in mind the DLI when making this decision



Federal Court

- If a claimant receives an Appeals Council denial, they can appeal to the United States District Court
- Can also simultaneously reapply
- Federal Court cases are decided based on whether the ALJ followed the proper rules and procedures



Questions?
Thank you for attending!



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If you are an advocate and have any questions after this presentation, please contact us!

If you are looking for representation, please contact your local bar association or call one of our offices to see if you are eligible for representation.

Check out our website at www.nslawservices.org and follow us on social media @nslawservices or @nassausuffolklawservices