

ELDER BENEFIT SPECIALIST (EBS) PROGRAM GUIDELINES FOR SOCIAL SECURITY OR SSI DISABILITY APPLICATIONS, RECONSIDERATIONS AND HEARINGS

This technical assistance document provides guidance in accepting Social Security and/or SSI Disability Cases.

Introduction

Applying for Social Security Disability can be complicated and may involve several steps, including application, reconsideration, hearing by an administrative law judge (ALJ), review by the Appeals Council, and Federal Court Review.¹

Elder Benefit Specialists (EBS) may assist individuals with disability applications after discussing the merits of the case with the Program Attorney (P.A.). However Social Security and SSI Disability reconsiderations and hearing requests may only be accepted by the EBS in the event other adequate representation is unavailable. Unavailable means that two attorneys who practice disability law within 100 miles of where the potential client resides have rejected the case in writing.

Additional considerations for case acceptance, in addition to lack of adequate representation, include: the merits of the case according to the P.A., caseload, available time, and other resource limitations for the P.A. and EBS.

The P.A. and EBS must assure that appeal deadlines are met for reconsideration and hearing levels. Regardless of whether or not the EBS and the P.A. decide to take on the case, appeal deadlines must be determined right away, and the potential client must be informed that, until the EBS accepts the case in writing, the potential client is responsible for filing a timely request for the appeal.

Application

It is permissible for an EBS to assist individuals with applications, according to the following protocol:

Before accepting a case, the EBS must obtain some basic information that will be helpful when discussing the case merit with the P.A., such as: disability onset date; person's age; whether the person is still working; the amount of monthly earnings; past and current work history; educational level; type of disability(ies); whether or not the disability meets the Social Security listing of impairments; additional physical or mental conditions that preclude the person from returning to work; the availability of medical records reflecting

¹ Only program attorneys can handle Reviews by Appeals Council and Federal Court Reviews.

care needs related to the person's disability; and the need for and effect of prescription medicines.² See Sample Intake Form. The P.A. may provide an alternate intake form.

After gathering this information, the EBS will have a discussion with the P.A. Based on the outcome of the discussion, a timely decision of acceptance or rejection shall be provided to the person seeking assistance. A notice of acceptance will clearly outline the EBS and the client's responsibilities. At the option of the local agency, a notice of rejection may include a list of local attorneys and/or pro-bono attorneys.

When the EBS is the designated Appointed Representative at the application level, and the application is denied, the EBS must immediately determine the deadline for appeal and file a reconsideration request on behalf of the client. If the EBS is not the Appointed Representative, then s/he should explain the process of submitting a reconsideration to the person and must note that the person is responsible for filing a timely appeal.

Rarely, and only under the direction of the P.A., should consideration be given to a “**re-reconsideration**” request (see Attachment). Re-reconsiderations are only appropriate in limited circumstances.

Reconsideration

Case rejection letters are needed prior to assessing if a reconsideration case will be accepted by the EBS. The letters of unavailability are required by two attorneys who practice disability law within 100 miles of where the potential client resides. The letters must state that the attorneys cannot accept the case. In addition, case merit, caseload size, time and resources on the part of both the EBS and the P.A. will affect the determination of taking a case for reconsideration.

If a decision is made to reject the case at reconsideration, then a timely notice will be sent to the person. At the option of the local agency, a notice of rejection may include a list of local attorneys and/or pro-bono attorneys.

In case of acceptance, the notice will outline the client and the EBS' responsibilities. The P.A. will provide guidance and any templates necessary for intake and/or for developing the case at the reconsideration level.

When the EBS is the Appointed Representative for the reconsideration, and the reconsideration is denied, the EBS is responsible for filing a timely ALJ request. If the EBS is not the Appointed Representative, then the EBS should explain the process of submitting an ALJ request to the client. The EBS will assure that the client is informed that s/he is responsible for filing a timely appeal. If necessary, after consulting with the P.A., the EBS may assist the individual in filing the appeal.

² Lack of medical care may be due to inability to pay and is not in and of itself reason to dismiss the case.

SSI/SSDI ALJ Hearings

Before an ALJ case is considered for representation, except in instances when the person is already a client at the reconsideration level, the person must obtain unavailability letters from two attorneys who practice disability law within 100 miles of where the potential client resides, stating that the attorneys cannot accept the case. An exception to the private attorney referral requirement may be granted for persons who, due to the nature of their impairment or current circumstances, would have significant difficulty contacting and/or communicating with an attorney outside the EBS program. For example, a person who has severe agoraphobia, or a person who has severe mental illness and lacks transportation, or a person who is chronically homeless. The exception must be discussed with the P.A.

The EBS and P.A. will consider case merit, caseload, time and resources, as well as the EBS' capacity to handle an ALJ disability hearing. If the EBS does not have this capacity, then the EBS should indicate that to the P.A.

Attachments:

[Sample Intake Form](#)
[Re-Reconsiderations](#)



Wisconsin
Department of Health Services

Division of Long Term Care
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**SAMPLE INTAKE FORM
FOR DISABILITY CASES**

1. Intake Date:
2. Name
3. DOB
4. Check appropriate level: ___ Application ___ Reconsideration ___ ALJ Hearing
5. In case of appeal, obtain copies of prior documentation, including the denial from SSA.
6. In case of appeal, check appeal deadline and advise the individual accordingly.
(see T.A. document)
7. Disability onset date:
8. Is person still working? If the answer is yes, complete # 9. If the answer is no, skip to # 11.
9. Describe the type of work, the hours, and the monthly earnings
10. Does the person have any work related expenses?
11. Describe the work history (type of work; years worked; hours)
12. Highest educational level reached
13. Does the person have any trade related training?
14. Describe the disability or disabilities, including any mental conditions; explain how they prevent the person from working.
15. Do any disabilities meet the listing of impairments, presumptive disability and/or qualify for a compassionate allowance?
16. Has the person received medical care for the disabilities?
17. Does the person take prescription medicine for any of the conditions? List names and dosages.
18. List any additional relevant information.



Re- Reconsideration Request¹

1. What is it?

A re-recon is a request to the Disability Determination Bureau (DDB) to consider a case after it has been denied at the reconsideration stage but before the appeal is filed for an ALJ hearing and the case is transferred to the Office of Disability Adjudication and Review.

2. Timeline

When the DDB issues the denial notice, the claimant has 60 days plus five mailing days in which to request the next level of appeal, an ALJ hearing.

- i. If no appeal is filed within this time frame, the claimant's claim has expired unless the claimant can establish good cause for late filing.
- ii. If an appeal is filed within this time frame, the case is transferred to the Office of Disability Adjudication and Review (ODAR).
- iii. The window for asking for a reconsideration of the reconsideration denial is therefore very small. It must occur within that 65 day period, and must be requested in enough time to allow the hearing examiner to consider the request and come to a decision.

3. When to ask for a re- reconsideration

VERY RARELY. For the whole program, use of this option should be very limited. The DDB will stop extending this courtesy if this remedy is used frequently. Use a re-reconsideration when:

- a. You believe that the hearing examiner made a flat-out mistake.
- b. When new evidence has come in during the critical time period that makes resolution extremely likely. In the vast majority of cases, this means that you will either meet a listing or a grid rule.

4. Factors in favor of asking for Re- Reconsideration

- a. The medical evidence shows decisively that the claimant meets a listing or a grid rule.
- b. There is enough time to get the evidence to the hearing examiner before the DDB loses jurisdiction over the case and it goes to ODAR.

¹ Provided courtesy of the Disability Benefit Specialist Program

c. The case requires minimum case development. If the case requires a lot of case development, you might as well ask for an on-the-record request when it gets to ODAR.

5. *Factors against asking for a Re- Reconsideration*

- a. This is really a step five case and a Vocational Evaluation (VE) will be necessary.
- b. You don't have time to do the case development necessary to get it before the examiner in enough time for a decision to be made.
- c. It is a good case, but there is no additional decisive evidence.
- d. Cases requiring an assessment of credibility, such as mental health, pain, back cases.

6. *Process*

- a. All re-recons must go through the program attorneys. Explain to your program attorney why you think this case warrants a re-recon.
- b. If the case involves an error, the program attorney will contact our liaison at the DDB.
- c. If the case involves new evidence, we will still be contacting the liaison at DDB, but we will be submitting evidence for the original examiner to consider. We do want to track these to ensure that the examiner knows they are allowed to do these analyses and will complete the analysis before the DDB loses jurisdiction.
- d. ALWAYS keep track of the appeal deadline. The re-recon DOES NOT freeze the timeline in which to file an appeal. Sometimes, you may run out of time before the hearing examiner/ DDB reaches a decision and you will need to go ahead and file the ALJ request.



Wisconsin
Department of Health Services

Attachment #2 to P-00627A (04/2014)