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homeless  
ACTION CENTER

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# [HAC ADVOCACY MANUAL]

Best Practices and Policies for delivering Pro Bono legal services consistent with the mission and values of the Homeless Action Center.

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# HAC Advocacy Manual

## Pro Bono Attorneys

### Step 1. Intake

- a. Contact the client within 30 days of receiving the case file to schedule a meeting to confirm the new representation. Space is available at the HAC offices for any client meetings. See internal firm policy for any required disclosures and/or conflict checks.
  - o At this point you must have the client sign a new SSA Form 1696 designating yourself as the primary Appointed Representative and the HAC attorney/advocate as the secondary Appointed Representative.
  - o You should also inquire with the client about any recent treatment sources. Up-to-date records are often appreciated by Administrative Law Judges. If you are requesting updated records or records from a new treatment source, be sure to have the client sign a HIPPA compliant release of information.

### Step 2. After Intake

- a. Immediately submit the completed 1696 to the appropriate Office of Disability Adjudication and Review (ODAR) via fax. Oakland ODAR fax number (510) 444-1974. Confirm receipt and accurate representation information via phone at (866) 366-4916. A copy of all correspondence to the client by the Administration should then be mailed to you as the newly appointed representative.
- b. Pro Bono Attorneys must also sign up for Electronic Records Express (ERE) at a local ODAR Office to view and submit case records electronically.

### Step 3. Case File Review

- a. If you are accepting a case shortly after a Request for Hearing has been submitted, a copy of the case file will be provided to you on CD. You should review all of the evidence on the CD in order to prepare fully for

the administrative hearing. Your review will also provide the basis for your advocacy brief.

- b. If you are accepting a case after the hearing date has been scheduled, you will be advised by the Pro Bono Coordinator if any medical evidence, or other documentation, has been submitted to the hearing office which will not be present on the case file CD. You will be required to review the CD and hard copies of any newly submitted evidence.

#### **Step 4. Case Development**

- a. After reviewing the file, develop a theory of the case. You should reference the Listing of Impairments and the Medical Vocational Guidelines, which can be found online.
- b. At this point you should be able to determine what, if any, additional evidence you would like to add to the case file. For example, you may feel an MRI is necessary to objectively demonstrate the severity of degenerative joint disease. Or you may feel specific psychological testing is necessary to demonstrate cognitive impairments.
- c. It may take the hearing several months to be scheduled, during the interim, periodically update the client's medical records, especially from any regular treating sources.
- d. When you have medical records that you would like to include in the case file, you may fax them with the ODAR supplied barcode cover sheet, or if you have signed up for ERE, you may simply submit them via the ERE website.

#### **Step 5. Hearing Preparation**

- a. ODAR is required to give you notice of the hearing date at least 20 days before scheduling the hearing. In practice, we generally have at least 60 days before the hearing is scheduled. And based on your availability, you may generally negotiate an appropriate date for the hearing with the ODAR scheduler. The scheduler will call you to inform you that the hearing is ready to be calendared.

- b. Immediately inform the client of the hearing date and confirm that the client has a valid state-issued Identification Card. If the client does not have a valid ID, contact the Pro Bono Coordinator for assistance.
- c. At this point you should once again check to make sure you have received all of the evidence that you have requested and that it has all been submitted for inclusion in the electronic file.
- d. Having already reviewed the electronic copy of the evidence at Step 3, and any hard copies of evidence not included in the electronic file, you should be prepared to fully brief the ALJ on the merits of the claim.

### **Step 6: The Hearing Brief**

- a. Familiarize yourself with the relevant law.
  - For our purposes, Title II and Title XVI of the Social Security Act are the pertinent parts and can be found here:  
[http://www.ssa.gov/OP\\_Home/ssact/comp-ssa.htm](http://www.ssa.gov/OP_Home/ssact/comp-ssa.htm).
  - The rules governing Social Security Disability programs are in the CFR and can be found here:  
[http://www.ssa.gov/OP\\_Home/cfr20/cfrdoc.htm](http://www.ssa.gov/OP_Home/cfr20/cfrdoc.htm).
  - A final source of binding, precedential guidelines comes from Social Security Rulings (“SSRs”) and Acquiescence Rulings (“ARs”). SSRs are internally generated by the Administration in an effort to clarify the interpretation of law. ARs are explanations from the Administration detailing how they will apply decisions of US Court of Appeals which vary from national policies for adjudicating disability claims. Both types of rulings can be found here:  
[http://www.ssa.gov/OP\\_Home/rulings/rulings.html](http://www.ssa.gov/OP_Home/rulings/rulings.html).
- b. The brief generally offers the fact finder a concise statement of facts, the procedural history, a 5 Step Sequential Evaluation analysis, and a Drug and Alcohol Abuse (“DAA”) materiality analysis. In the absence of DAA, a materiality analysis should be omitted. A sample brief is attached in the appendix.

- c. Disability is defined as being "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or result in death." (20 CFR §404.1505 & §416.920)
- d. To establish that an individual meets the disability standard SSA employs the 5 Step Sequential Evaluation process.
- e. Step 1 of the 5 Step Sequential Evaluation process analyzes whether the claimant is engaged in Substantial Gainful Activity ("SGA").
- f. Step 2 analyzes whether the claimant has a severe impairment that has lasted, or will last, at least 12 months. In this context "severe" is undefined, but non-severe condition/limitation can be paraphrased to mean a slight abnormality, having no more than minimal effect on basic work activities (20 CFR Sec. 416.920(c)).
- g. Step 3 analyzes whether the claimant's impairments meet or equal the medical conditions or criteria of one, or more, listing described in the Listing of Impairments. See <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>.
- h. Provided a claimant does not meet or equal a listing, at Step 4, SSA must then determine whether the individual can still perform his/her past relevant work given his/her residual functional capacity.
  - o Past Relevant Work ("PRW") is limited to SGA performed in the 15 years prior to the hearing date (20 CFR 416.965(a)).
  - o Residual Functional Capacity ("RFC") is what the claimant remains capable of doing despite physical and/or mental limitations imposed by his/her medical conditions. And it must take into consideration the limiting effects of all severe and non-severe medical conditions (20 CFR 416.945(e)).
- i. If the claimant is found capable of performing his/her PRW, the claim can be denied. However, the claim will proceed to Step 5 if the PRW is

excluded by the RFC. At Step 5, SSA must analyze whether the claimant can do any job that exists in significant numbers in the national economy (20 CFR §404.1566).

- Here, the burden of proof shifts to the Administration.
  - The claimant's ability to do other work is determined by his or her physical and mental RFC and the exertional and non-exertional limitations represented by the RFC, in combination with the claimant's age, education, and work experience.
  - Typically, the same limitations that prevent returning to PRW identified in Step 4 may be used to demonstrate that the claimant cannot perform any other work.
- j. In addition to showing the claimant is unable to perform any work in the national economy, a claimant may be entitled to a finding of disabled under the Medical-Vocational Guidelines (Appendix 2 of Subpart P of 20 CFR §404). These guidelines are colloquially referred to as the "Grids." For the grids to categorically direct a finding of disabled or not disabled, the claimant must fit the definitions set forth in the grids exactly. The grids do not account for non-exertional limitations, and are therefore, inappropriate basis for denial when there are any non-exertional limitations in a claimant's RFC. A visual representation of the grids can be found here: <http://severe.net/grid.html>.
- k. When substance use is present in the medical records, an analysis showing that substance use is not material to the determination of disability is recommended. It should be noted that substance use alone does not bar disability eligibility. However, a finding that an individual's disabling limitations would improve in the absence of substance use is a finding that DAA is material to the determination of disability (20 CFR 416.935). Also see SSR 13-2p for a thorough explication of SSA's DAA policy.
- l. THIS BRIEF SHOULD BE COMPLETED AND SUBMITTED TO THE HEARING OFFICE AT LEAST 10 DAYS PRIOR TO THE SCHEDULED HEARING DATE.

## Step 7: The Hearing

- a. Prior to the hearing, you will have reviewed the evidence, written a hearing brief, and prepared the client for the hearing.
- b. On the day of the hearing, arrive at ODAR at least 30 minutes prior the scheduled hearing time. In Oakland, ODAR is located in the Ronald Dellums Federal Building, on the second floor of the north tower. There is very strict security at the entrance requiring either a valid state issued identification or valid passport for both the attorney and claimant.
- c. Check in with the receptionist. ODAR is currently in transition. In the past, a CD with the electronic record was provided on the day of the hearing. However, ODAR has informed us that it will no longer distribute these CDs, but no effective date has been issued for this policy. It is, therefore, incumbent upon you to take copious notes during your review of the electronic record and have it available for reference during the hearing. You may also bring a laptop to the hearing to view the electronic record if you have downloaded it from ERE. At this time, ODAR does not provide WIFI access.
- d. In addition to the Administrative Law Judge, a Hearing Monitor is present during the hearing to operate the recording equipment and assist the ALJ, if necessary.
- e. A Vocational Expert (“VE”) will also be present and testify at the hearing. The VE may testify in person or telephonically.
- f. A Medical Expert (“ME”) may testify remotely if the ALJ has coordinated the ME’s appearance. If you believe that an ME’s testimony would be useful in explaining medical evidence or the implications of the evidence, you may request that the ALJ schedule an ME’s appearance.
- g. The ALJ typically begins the hearing by taking testimony from the claimant and then testimony from the vocational expert. However, this is not a hard and fast rule. The ALJ may question the claimant at length or may ask you to begin with your direct examination.



- h. Once the ALJ moves on to take testimony from the VE, the ALJ will ask the VE to opine about the claimant's past relevant work and whether the claimant is capable of performing that work. The ALJ will also ask the VE a question, or set of questions, using a hypothetical person with limitations that are drawn from the evidence. After the ALJ has concluded these questions based on the hypothetical, you will have the opportunity to pose your own hypothetical question and take issue with any of the VE's earlier testimony.
- i. If an ME testifies, it is less formal and may occur at any time during the hearing. The ME must have reviewed all of the evidence to offer an opinion and it must be consistent with the SSA rules and regulations. You will have an opportunity to cross-examine the ME.
- j. Once the claimant, VE and ME have testified, the hearing will be concluded. On rare occasion, the ALJ will issue a bench decision in favor of the claimant. But this is not typical.
- k. The above hearing process description is a summary of the fundamental elements of the hearing. You would benefit from consulting a practice guide to further develop your preparation for the hearing process.

### **Step 8: Post Hearing Issues**

- a. Depending on the facts brought to light at a hearing, the ALJ may take any action necessary to further develop the record if she/he deems it necessary. For example, if a client states she had recent imaging that could show degenerative joint changes the judge may leave the record open for 30 days for the representative to acquire those records and submit them.
- b. When the record is not fully developed, an ALJ may request a post-hearing consultative examination. This type of examination would be scheduled by a Disability Evaluation Analyst at the Social Security Administration's Disability Determination Service ("DDS"), which is a state agency. The selection of the examiner is made by the Analyst and paid for by DDS.

- The examiner's report is subject to the same scrutiny you would apply to any of the evidence in the claimant's record. Within 10 days of receipt of the report, you should submit your response.
- c. If the evidence is particularly challenging for a lay person, the ALJ may send interrogatories to an ME. Here again, within 10 days of receipt of the interrogatories, you should submit your response.
- d. Rarely, an ALJ may find that the hearing record was not properly developed during the first hearing and schedule a supplemental hearing. You are well within your rights to inquire as the specific purpose of the supplemental hearing in order to be fully prepared.

### **Step 9: Return the Case File to HAC**

- a. Once the ALJ has issued the hearing decision, you should contact your point person at HAC. If the hearing decision is "Fully Favorable" you may contact the client and discuss the hearing decision with him. Your point person at HAC can advise the client on the next steps to get into pay status.
- b. However, if the hearing decision is either "Partially Favorable" or "Unfavorable" the client will need to be advised of their options and responsibilities going forward. Again the point person at HAC is likely in the best position to offer that advice.
- c. The case file should be returned to the Pro Bono Coordinator. As is likely the case in your own firm, the following materials developed during the representation must be included in the file:
  - Any correspondence between the SSA and the representative,
  - Any correspondence between the client and the pro bono attorney,
  - Any evidence acquired after the case was placed with the pro bono attorney, and
  - The representative brief.