

The federal administrative law judge (ALJ) is the third layer in the administrative process a claimant must go through in order to apply for social security disability benefits; additionally, it is the only level where the claimant has a right to a due process evidentiary hearing in order to present his or her case.

The ALJ will conduct an evidentiary hearing wherein the claimant has due process rights to present evidence on his or her behalf, to cross examine expert witnesses, to appeal an adverse decision, and to obtain counsel as well as experts to assist in the presentation of his or her case. “Due process” involves giving the claimant every opportunity to prove his or her entitlement to benefits, and perhaps, to help him or her to obtain evidence helpful in their case if unrepresented. On the ALJ’s part, due process involves being open minded until the evidentiary hearing and the record are closed.

After the hearing is closed and the record is closed, the ALJ must make a written decision as to the claimant’s entitlement to benefits or whether he or she should be denied. In so doing the ALJ has help from clerical staff, paralegal and attorney writers, medical experts, and vocational experts. The ALJ must consider the facts of each case, the applicable agency regulations, and the applicable law. One’s experience is also helpful in making an informed decision.

A decision adverse to the claimant may be reviewed by the Appeals Council in Falls Church, VA. A decision adverse to the claimant that is affirmed by the Appeals Council may be appealed to, and reviewed by the claimant’s geographical federal district court. If adverse again, the decision may be reviewed by the pertinent federal appeals court. Although most appeals stop here, it is possible that the United States Supreme Court will review the adverse decision. There is no restriction on a claimant filing again for benefits and going through the process again.

In my case, I prefer to review a case assigned to me as early in the process as possible. This allows me to identify the issues in the case and make notes both written and mental to determine what is needed to complete the record and determine the need for experts such as medical, psychological, or vocational.

I make a point to stay balanced and keep an open mind on each case until it is closed and ready for decision.

In making a decision as to disability, the social security ALJ must always use the Sequential Evaluation Process as defined by social security regulations. This process provides a logical way of thinking for the ALJ who must make decisions as to disability. The Sequential Evaluation Process includes five (5) steps.

The first step is referred to as Substantial Gainful Activity (SGA). Is the claimant engaging in Substantiated Gainful Activity? If the claimant is engaging in SGA, this is an automatic denial, and the process stops there. If the claimant is not engaging in SGA, the ALJ will go on to Step 2.

Step 2 involves determining whether the claimant has a “severe” impairment. A severe impairment – by definition – is one that has significant impact on one’s life and which decreases a person’s RFC or MRFC to perform SGA. If the claimant does not have a “severe” impairment, the claimant is found to not be disabled and the process stops here. If a “severe” impairment is found then the process goes to Step 3. Studies have shown that not a lot of claims are denied at this step.

Step 3 involves a finding of whether a claimant’s impairment or impairments meet one of our own listed impairments in the CFR, or whether the impairment/impairments in combination would equal any of our listed impairments. An ALJ may decide whether there is a meeting of a listing. Often listed impairments are those medical or mental conditions deemed to be so bad By experts that those conditions meet the severity of the listings would be considered to be totally disabled and unable to work. If a claimant meets or

equals the listings, the claimant is found disabled, and the process stops here. If a claimant does not meet or equal the listings the process continues to Step 4.

Step 4 involves whether a claimant can return to past relevant work (PRW). In other words, if a claimant's impairment is such that he or she can return to PRW, the claimant is denied benefits, and the process stops here. If, however, a claimant's impairments are such that he or she is precluded from being able to perform PRW, then, the process continues to step 5.

Step 5 involves whether there is any other work which exists in significant numbers which the claimant can do despite his or her limitations. At this step, if the claimant cannot do PRW, the burden at Step 5 shifts to the Commissioner to show that there are jobs that exist in significant numbers which the claimant can do despite his or her impairments. In its decision, the 4th Circuit (of which WV is a part) has stated that Vocational Experts are necessary at Step 5. In a hypothetical question which the ALJ asks a VE, the expert will state that there are or are not jobs which the claimant can do despite his limitations. The hypothetical question to the VE will include all the claimant's impairments. If the VE finds no jobs, the process is complete and the claimant is found disabled at Step 5. If the VE finds that there are jobs which the claimant can do based on his or her limitations, the VE will state what those jobs are, what the number of those jobs are in the national economy, and whether his or her testimony on the jobs is consistent with the Dictionary of Occupational Titles (DOT). Claimant's counsel is permitted to cross-examine the VE. If there are no jobs available and if the ALJ agrees with the VE, the claimant is found not disabled at Step 5.

By Regulation, the Sequential Evaluation Process must be used in all disability cases.

Certain cases may be decided at Step 5 using our Grid Rules. Grid Rules are rules set forth in the CFR's wherein if a claimant is limited to a certain RFC, have had a certain set of skills during their life, and are of a certain age, the particular grid rule will dictate a finding of disabled. If applicable the Grid Rule usually kicks in at age 491/2.

In addition to the foregoing and the parts of the case, the ALJ may also use agency regulations and federal court decisions to assist him or her in deciding a case. The 4th Circuit has some very good decisions about analyzing pain, applying the hearing physician rule, and about analyzing evidence.

I was born and raised in Wheeling, Ohio County, WV. Ranking second in my high school class I went on to West Virginia University and there graduating as an honor student. I received an academic scholarship to attend The George Washington University in Washington, DC, receiving a Masters Degree. In between serving five years as a military officer I was able to earn my Law Degree from the Law School at West Virginia University and Doctorate of Philosophy from the West Virginia University Graduate School. I practiced law in the state of WV for several years prior to becoming an ALJ. I have always been a person driven to work. With very few hobbies except those of my children, my dedication and attention has always been on my work days, nights, and even weekends. Even though I have always felt the need to work, I have never failed to include my family time in my thoughts and efforts.

It is said that I am a “workaholic”. I believe that this need to work come from the times in which I was raised. At the end of World War II Americans knew that if they wanted to make something of their lives that they had to get work hard, get an education, and be a loyal American. That is how I was raised and that is how I have lived.

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