

# The Appeals Process

— Step By Step —



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# When you apply for Social Security Disability benefits in Georgia, odds are that you will be denied on the first level of review, this is based on objective data.

Some claimants do win benefits on the first try, but the percentages show that a denial is more likely.

Although you're not alone in your being denied, it may feel like the end of the road. In fact, it's often just the beginning. Instead of giving up at that point, consider your rights to appeal, either on your own, or with the assistance of an attorney.

While there are defined steps to the appeals process, they can be quite difficult to navigate on your own. With the right legal team by your side, you can not only make a more educated decision about what to do next, you will also have the legal representation you deserve and need to guide you through the process.



# 1. The Four Levels of Appeal

- Reconsideration
- Hearing by and administrative law judge
- Review by the Appeals Council
- Federal Court review

## Reconsideration

Aptly named, reconsideration is when a claimant asks the Social Security Administration to take a second look at your disability case. The reconsideration decision will be done by a state agency, and you'll likely have an adjudicator. An adjudicator is an employee with delegated authority from the Commissioner of Social Security to approve or disapprove applications for Social Security benefits. The adjudicator presents their findings to in-house SSA doctors, who then decide if someone meets the SSA's definition of disability.

If you are denied on your initial application, your first step is to exercise your right to request a reconsideration of the first decision.

During reconsideration, the SSA will try to work with you and your legal team to obtain updated medical records and the opinions of the physicians who've evaluated your condition. They may schedule you for additional medical testing, or request that you complete additional paperwork, like the work history report or the adult function report. It can be very important to have an attorney-representative and their law firm behind you during this process. If you miss appointments, or sometimes fail to respond to SSA letters as a claimant, you will want to have a legal team that makes sure you get on the right track to submitting needed information on a timely basis. Failing to respond to notices from the SSA is not a good idea.

On average, reconsideration takes three to five months, but decisions can come back in as few as eight weeks.

If you are denied at the reconsideration level, you have the right to request a hearing.

Prior to March 31, 2020, there were ten states that participated in a federal trial to eliminate reconsideration level appeals. This meant that if a claimant was denied at the first (Initial) level of review, if they appealed, it would be to request a hearing. The federal government is now ending this trial program for the time being. The state of Georgia was not part of the pilot program.

## 2. Hearing

Again, the percentages suggest a high likelihood of denial at the Reconsideration level. Within 60 days of receiving a denial following reconsideration, you can ask the SSA for a hearing with an administrative law judge (ALJ). You must make this request in writing. The SSA typically prefers you do this online, but you are absolutely allowed to do the appeal at your local SSA field office. You can also contact an attorney for help in your appeal and case in general. Once the appeal is received by the SSA, you should be notified via mail which hearing office has jurisdiction over your case.

The Office of Hearing Operations (OHO) will send you the notification regarding your hearing.

### **There are three main hearing offices in the Atlanta Metro area:**

- Covington
- Alpharetta
- Atlanta Downtown

### **And statewide, there are hearing offices in:**

- Macon
- Savannah
- Rome
- Augusta
- Vidalia

You may also be asked to have your hearing via video teleconference (VTC.) VTC is a way that the Social Security Administration (SSA) claims will streamline the hearing process and wait time for disability hearings by processing cases remotely. VTC is an option that allows the administrative law judge to attend to your hearing electronically from another city, or perhaps another state. These are judges that will not meet you in person, but over a big screen TV. You will sign in with your attorney, if you are represented, and your hearing will be completed by way of video conference call. At Affleck and Gordon, we prefer to appear at hearings in person and not by video (VTC) when possible. The judge is there to listen to you as the claimant, and the judge is also there to try to understand how your medical issues affect your functional abilities at home, work, or anywhere for that matter.

It's imperative that you have strong and experienced legal representation at your hearing. They will make oral arguments and sometimes submit a written argument to the judge (ALJ) assigned to hear your case. They and their team of dedicated case managers will make sure that your medical records are complete, that you have completed all required paperwork and documentation of how your medical condition directly impacts your ability to work, and they'll answer any questions you have about the appeals process. Your attorney will have reviewed sometimes thousands of pages of medical records. Your attorney has to take all of that information, and convince a judge within a small time frame, typically 30-60 minutes, why you as the claimant are disabled. Thorough preparation from your attorney is critical for the best possible results at your hearing. A judge will take positive notice of a prepared attorney.

## 2.1 Tips for Your Hearing

- Keep your attorney updated with any changes to your medical status as you prepare and await your hearing.
- If your contact information, address, or phone number changes during this time, update your legal representative as soon as possible.
- Ask questions if and when you don't understand part of the appeals process. This helps your attorney explain the areas of law that are confusing, and it's your right to know!
- Trust your experienced attorney to help you navigate the appeals process.

For the Social Security Administration Atlanta, the average wait time for a disability hearing is 14 to 15 months. This varies depending on which hearing office you are assigned to based on your residence. The SSA is attempting different programs to speed up the waiting times, but there is still usually a significant wait for your day at hearing.

If you are denied at your hearing, you have the option to request a review by the Appeals Court.



## 3. Review by the Appeals Council

As you go further in the process of appeals (if you have been denied), the standard of review begins to change. When a claimant appeals an 'unfavorable' decision from an Administrative Law Judge, the Appeals Council will review the case. The Appeals Council is a part of the SSA and is based in Falls Church, Virginia, outside of Washington D.C.

When the Appeals Council receives an appeal, they are supposed to review not only the medical evidence, and not only the judge's decision, but also the written arguments, called exceptions, made by yourself or your attorney. If the Appeals Council agrees the judge made an error in the decision, they can either decide that the case should be approved themselves, or they can send the case back for a new hearing. If you get a new hearing, you are now back at the ALJ level of review, and if you get denied again at hearing, you can go back to appealing to the Appeals Council. If the Appeals Council denied your claim and leaves the judge's decision in place, you have the right to appeal to the United States District Court over your area of residence. This can be very confusing to someone who does not specialize in Social Security Disability Law. Make sure your attorney understands the potential appeals, and new claim filings, available to you as the claimant.

In most cases, you have 60 days from the date of the ALJ's decision to appeal to the Appeals Council. Most cases at this stage, once appealed, can take more time of course. The current average being stated by the Council is 8-10 months, but this is only an average and not a guarantee.

If you are denied at the Appeals Council, your last recourse would be to send the case to the United States District Court for review.



## 4. Federal Court Review

The United States District Court level of review is outside of the Social Security Administration.

You are now filing an “outer-agency” appeal. Before, all of the levels of review including the appeals council were part of the SSA agency.

Even the Appeals Council is under the SSA. When you appeal to the US District Court, however, it’s a judicial court that exists outside of the SSA. If the US District Court feels there was enough error, they will remand the case back for a new hearing with an ALJ again.

This is usually the final level of appeal possible, however SSA cases can and have gone to the U.S. Court of Appeals and the Supreme Court of the United States level of reviews.



# We're Affleck & Gordon

You don't have to navigate your social security disability claim alone. We are here to help our clients win the disability that they deserve, and we understand how stressful the process can be. We've helped over 40,000 people in Georgia receive disability, workers' compensation, or Veterans disability for over 40 years. We're here to help you, too.

If your Supplemental Security Income or Social Security Disability Insurance claim has been denied, or you're thinking about filing and don't know where to start, Affleck & Gordon can help. We've been helping people in Georgia just like you for over 40 years. [Sign up for a free case evaluation here](#), or call us (404) 373-1649.

