



Medical Records Speak Louder Than Words: What It Takes to Win a Social Security Disability Claim

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Sincere and passionate testimony can make great courtroom drama. Unfortunately, such testimony does not win a Social Security disability case. You can tell the Social Security Administration (SSA) that you are too sick to work. Your family and all of your friends can state under oath that you are too sick to work. Your doctor can too. However in a Social Security disability case, the most persuasive “testimony” is not offered by a person but an inanimate object – medical records. If your medical records don’t corroborate what is being said then it will be as though nothing was said at all.

SSA has its own way of looking at things. Even the way it talks about disability is different so you need to know how to speak the agency’s language.

What “Disabled” Means to SSA

First, in applying for social security disability, you need to understand what SSA means when it uses the word “disabled.” You have to prove you meet the agency’s definition of that word, not yours. Also, it is up to SSA to decide that you meet that definition. So even if your doctor thinks you are disabled, SSA reserves for itself the conclusion that whatever is wrong with you makes you “disabled.” To SSA, you are “disabled” if you have a “medically determinable impairment”¹ which will result in death or is so “severe”² that it has or will eliminate your ability to do “substantial and gainful activity”³ for at least twelve continuous months. Translation: you have to have something a “doctor can find” that is terminal or affects you so much that you cannot work at a job 8 hours a day, five days a week for at least 12 continuous months.

Every person applying for Social Security disability is expected to produce medical evidence. You can produce records yourself or simply give SSA all the names of the doctors, hospital and clinics that are treating the impairment you believe is making you unable to work. You may have more than one impairment, and therefore, it is important to tell SSA about all the places up go for treatment and people you see for care.

¹ Medically determinable generally means your medical condition has to be something that a doctor can find or identify with a diagnosis. 42 U.S.C 423(d)(1)(A)

² “Severe” generally refers to what activities of daily living your impairment will affect and whether such affect will last for at least 12 months. 20 CFR 404.1520

³ Substantial and gainful activity generally work that grosses \$1000 or more a month.

Symptoms, Signs and Laboratory Findings

Second, SSA will look for medical records that support what you say is wrong with you in terms of “symptoms, signs, and laboratory findings.”⁴ Symptoms are your own descriptions of what you are experiencing regarding pain, inability to move, difficulty breathing, or other manifestations of your impairment. Although your statements about how you are feeling or what you can and cannot do will never “make” your case, they are relevant. But they are only a starting point.

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For the sake of discussion, let’s use the problem of low back pain. Let’s say you feel you meet SSA’s definition of disability because of such pain. Your case could start with your statement of “symptoms” of back pain. Your symptoms could be that your back pain makes it difficult for you to sit for more than a few hours and you can only stand for a limited amount of time. Next, SSA will look for two things in your medical records: what is causing your back to interfere with your ability to sit and stand and is that problem so severe that it could cause you as many problems as you have claimed. This is where “signs and laboratory findings” come in. SSA will look for these in your medical records to see if they corroborate your description of your symptoms. “Signs”⁵ are what a doctor can observed separate from anything you say. In the example of low back pain, a “sign” would be swelling seen by your doctor or tenderness he can feel or some other abnormality that your doctor can see or feel. These are also referred to as “clinical observations.” But your doctor’s observations will only take your case so far.

SSA will look to corroborate your symptoms and your doctor’s observations by looking at “laboratory findings.”⁶ These refer to diagnostic procedures that show what is wrong with your back such as certain kinds of x-ray studies, CT scans, nerve conduction studies (EMG tests), or MRIs. Diagnostic tests are the objective standards by which SSA will judge both your symptoms and your doctor’s observations. Objective tests (e.g. imaging studies or blood tests) often dictate whether SSA concludes you have an impairment and that such impairment affects you so much that you cannot work. Thus in the case of low back pain, if objective tests don’t show a severe abnormality then it is unlikely that SSA will believe you or your doctor that you are very limited in your ability to sit and stand.

Test results that provide definitive diagnoses can save you quite a bit of time when applying for Social Security disability. SSA has a list of medical conditions that it feels are disabling, and the corresponding “required” signs, symptoms and objective findings. If your condition is on that list, then SSA will quickly find that you are disabled. But be careful because it is not always as simple as it sounds. Sometimes just having a certain diagnosis will cause SSA to find someone disabled. A good example of such a diagnosis is liver cancer. SSA generally does not need to know more than that. However, in other cases, just the diagnosis alone will not make SSA believe that a person is disabled. In other cases, it is how the diagnosis is affecting the person. One good example is Parkinson’s disease. It is a medical condition that is on SSA’s list of disabling diseases. But the agency will not find a person has “disabling” Parkinson if they do not have “significant rigidity or tremor” which results in sustained disturbance of gross and dexterous movements, or gait and station.”⁷ This means the person has to have the diagnosis of Parkinson’s disease in their records and those same records have to show that the effects that SSA’s rules say are “disabling.”

The lack of such medical records makes it very difficult to win your case. So it is important to understand that not just any medical records will do. Your medical records need to support what you are saying and even what your doctor says about you. This is why a letter from your doctor that

⁴ 20 CFR Section 404.1508, 404.1529

⁵ 20 CFR 416.928 (b)

⁶ 20 CFR 416.928(c)

⁷ Listing at 11.06

simply says, “My patient is disabled” won’t convince SSA of anything. Such a letter will get nowhere with SSA. In fact, SSA can and will say they plan to ignore such a statement.

To SSA, the word “disabled” is not a medical term. This is the number one reason that the agency will not accept your doctor’s pronouncement that you are “disabled.” To SSA, being disabled is not a “diagnosis.” Under SSA law, the word “disabled” is an “administrative” or “agency” conclusion that it reaches based on its review of the medical evidence. How SSA reviews medical evidence and what conclusions it can draw from the medical evidence is dictated by its rules. Thus, SSA may accept your doctor’s opinion as to what is wrong with you (e.g. bulging discs) but feels free to interpret your doctor’s diagnoses in light of its rules. So never settle for a letter from your doctor that simply says that you are disabled. You need more.

How to Make Sure Your Medical Records Are Saying the Right Things About You

- **Tell your doctor all your complaints.** Make sure he writes down your complaints. If your complaints are not documented in your medical records, SSA is likely to think that if the complaints were not important enough for you to mention to your doctor, then they are not important enough for them to consider.
- **Make sure your doctor writes down your complaints in your chart.** It seems normal to most people that if they said it to his/her doctor, then the doctor wrote it down. Not necessarily. Too often people are unpleasantly surprised to find that their symptoms are not in their charts. If you spend time talking to your doctor about symptoms, it should be important enough to him or her to write it down. More to the point, SSA decisions are driven by what is in your medical records. Just as medical records can win a case, medical records can lose a case because your complaints of a bad back are not in your physician’s records. A credo of SSA is that if it is not written down then it is not true.
- **Be sure the symptoms your doctor writes down are the symptoms you feel make you unable to work.** You may tell your doctor about a lot of problems. But be sure the problem that you feel disables you is the problem that he has written down. SSA takes back pain that interferes with the ability to sit and stand very seriously. If you have those problems, it does not help you if your medical records show your back pain causes you to have a headache or lose your appetite. Make sure that your records show that you are experiencing problems sitting and standing. Tie your symptoms to the kind of things that would stop you from working and make sure those symptoms are recorded in your chart.
- **Make sure that your doctor responds to your specific complaint(s).** SSA will not pay attention to the symptoms listed in your medical records if your doctor did not respond to them by doing such things as performing examinations, running tests, offering treatment, or explaining why no treatment is available. This is necessary because any disease or health condition that is going to convince SSA that it stops you from working, will be one that merits a response from a healthcare professional.
- **Make sure that your doctor performs examinations and orders tests that are relevant to your complaint.** Your doctor can be your biggest ally but only if he gives you the right kind of help. Here, the “right” kind of help means having “relevant” tests to support the diagnosis. For example if your doctor thinks you have rheumatoid arthritis, SSA will only be convinced of the diagnosis if your doctor has ordered certain diagnostic tests that are generally recognized to show the presence of rheumatoid arthritis. SSA will then look at the results of those tests to see if they are true indications of rheumatoid arthritis. Another example is if you say that you have a

respiratory condition that interferes too much with your ability to breath. If this is the case, then you want to make sure that tests that measure your ability to breath are in your medical records.

- **Make sure that all treatment attempts are in your medical records.**

SSA will want to know that you have tried to make your symptoms better. It is important that SSA sees you have tried to get better. It is equally important for SSA to see that despite many attempts using various therapies, nothing has helped you get improve to the point that you could work a full time job.

Your Medical Records Should Say the Right Things About Your Doctor.

Who your doctor is counts to SSA. The SSA will learn a lot about your doctor (and therefore how much weight they should give to his medical records) through the records themselves. First, SSA will only give weight to healthcare professionals who they deem as "acceptable medical sources." This generally means licensed doctors. So if an acupuncturist or herbalist has "treated" you, his medical records won't be accepted as "medical evidence" by SSA. Second, the longer your doctor has seen you, the better. Rightfully, SSA thinks a doctor who has treated you for five years has more credibility than one who has seen you for only three weeks. Finally, it is extremely helpful to get records from a doctor whose specialty is in the area of your impairment. For example, if you feel rheumatoid arthritis is keeping you from working, SSA will listen to your primary care physician but it will *really* listen to a doctor who specializes in such a condition – a rheumatologist.

The horror stories that you may have heard that it can take years to win a Social Security disability case are often quite true. But the journey to an award can be shortened by starting with the right records because, in the end, medical records speak louder than your words.

ABOUT THE AUTHOR: Attorney Dotson has been licensed to practice law in Missouri since 1987. Alisa focuses her practice on Social Security Disability and Health Crisis Management. She is a member of the Missouri Bar, the American Bar Association, NAELA, and NOSSCR. Alisa has worked with a primary case load of clients with advanced cancers and terminal illnesses and represents her clients with a high level of sensitivity and professionalism.

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