

COOKE & COMPANY, INC.

Social Security Disability Representation

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Explanation of Social Security Disability Hearing and Legal Issues

The purpose of this document is to provide you with an explanation of the disability hearing process. This includes the operations of the Office of Disability Adjudication and Review (ODAR); the duties of the Administrative Law Judge (ALJ); the legal issues involved in your disability hearing; and the disability hearing process itself. The hearing involves the application you made for Social Security disability benefits under Title II Retirement, Survivors and Disability Insurance (RSDI), and/or Title XVI Supplemental Security Income (SSI) of the Social Security Act, as amended. The hearing will be held pursuant to a notice issued by ODAR. The hearing will be held before an ALJ. You were told by the Administration in its initial denial of your application that you had a right to legal representation at your hearing. You have legally contracted Cooke & Company, Inc. to serve in that capacity, and Mr. Cooke et al will represent you in the course of your hearing from preparation through hearing to post-hearing.

The Office of Disability Adjudication and Review (ODAR) is separate from and wholly independent of the application processing bureaus of the Social Security Administration at the Social Security Field Office where you filed your application for disability benefits, and which previously denied your claim. The Administrative Law Judge (ALJ) conducting your hearing did not participate in and is not bound by the previous decision made on your case by those bureaus and agencies. After reviewing the medical and vocational evidence of your case and listening to your testimony, the ALJ will issue a new and independent decision on your claim based on all the evidence which is applicable under Federal regulation, and of official record. After all evidence has been received and all relevant testimony has been taken, the ALJ will close the record, review all evidence, and issue a written decision on your claim. Copies will be mailed to you and to Cooke & Company, Inc. Before the record is closed, additional evidence may be added after the hearing, such as medical records and other evidence which was discussed or which comes up for the first time at the hearing, or additional evidence which may be requested by the ALJ. Additional medical examinations may also be obtained by the ALJ post-hearing before the record is officially closed.

The hearing will be conducted in an informal manner. The rules of evidence and civil procedure typical to the Court are not followed as closely in disability hearings. You do need to understand that all testimony will be taken under oath, and has the same force and effect as all testimony taken under oath. You are advised that Public Law 103-296 makes it a felony for any person to knowingly make a false statement of material fact to receive disability benefits. This same criminal rule applies to cases involving changes of benefits. These criminal provisions cover both RSDI and SSI applications. Thus you should simply answer all questions to the best of your understanding and memory, and if you do not understand a question, or do not remember a fact, simply tell the ALJ so. Within the hearing format utilized by the ALJ you will be required to answer questions posed by the ALJ and/or your representative. You will see that as the hearing progresses, the facts regarding your medical conditions and all associated exertional and non-exertional limitations that you want the ALJ to know will be discussed. Please understand that this is your opportunity to tell the ALJ the facts about your medical conditions, and you will be given every opportunity to make your case within the official format of the hearing.

In addition to yourself, your representative and the ALJ, other personnel at the hearing will include a Hearing Monitor, and a Vocational Expert (VE). The hearing is recorded so there is an audio as well as a transcribed record of the hearing. The Hearing Monitor is responsible for transcribing the hearing, operating the recording equipment, and in the case of a video hearing, operating the video equipment as well. You will notice a microphone on the table before you. This device records your voice but does not amplify it, so it is important that you speak clearly in a normal conversational tone directly into the microphone. Do not respond to questions by shaking or nodding your head, or by saying "Uh, huh." Instead state "Yes" or "No," in addition to your longer explanations. Please wait for the ALJ or your representative to completely finish asking a question before you respond, and do not interrupt if the ALJ or your representative are talking. These basic rules of procedure are followed to make certain that there is a clear recording, and it is crucially important that only one person speaks at a time to avoid confusion.

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The Vocational Expert (VE) is an expert on jobs and employment in America. This professional is a disinterested third-party used by the ALJ to impart detailed knowledge and impartial expert opinion about your Past Relevant Work (PRW) and other jobs you still may be able to do. The VE will essentially be speaking in code taken from the national Dictionary of Occupational Titles (DOT) and the U.S. Census, and you will not understand much of what is said. Rest assured that the ALJ and your representative understand the code and will question accordingly. If the hearing is a video hearing, the VE may also appear either on video, or via telephone. Additionally, in more complex cases, the ALJ may call upon the testimony of a Medical Expert (ME) to clarify some of the medical evidence, and to offer an impartial expert medical opinion regarding your limitations in relation to your condition and the medical evidence. Both the VE and the ME are also required to take the same oath to tell the truth that you will be required to take. At the hearing, your representative may or may not choose to question the ME based upon the questions the ALJ asked and the ME's response. Thus do not be alarmed if your representative declines to question the ME, as he has determined that he would essentially be repeating the ALJ's questions, and thus unnecessarily wasting precious hearing time. While you will be afforded every opportunity to explain your case to the ALJ, the ALJ may have as many as six other hearings that day, and ideally wants to limit each hearing to one hour. In short, an ALJ on schedule is a happy ALJ, and we want the ALJ happy. For this reason, family and friends as witnesses are rarely used. By Federal regulation, their testimony carries little weight except in a child case, and the issues they would discuss are already in the existing medical record. If a friend or family member wants to inform the ALJ of a salient fact or observation, they will be accorded that opportunity via formal letter to the ALJ prior to the hearing.

The legal issues of your disability claim are, (1) whether you are under a disability and if so, when such disability commenced and the duration thereof; (2) whether you meet the RSDI disability insurance requirements and are therefore entitled to a period of disability and disability insurance benefits under the Social Security Act, as amended, and/or; (3) whether you are medically eligible for SSI benefits under the Act, as amended. These rules are also applicable for an SSI Child's Claim for disability benefits. The Act defines disability as the inability to engage in any Substantial Gainful Activity (SGA) level work due to physical (exertional) and/or mental (non-exertional) impairments which can be expected to either result in death, or that has lasted or can be expected to last for a continuous period of not less than 12 months.

In a determination of disability, the ALJ is legally required to follow a five-step sequential evaluation process. You must meet the criteria and regulations of each step before the ALJ can proceed to the next step in the sequential evaluation. First, the ALJ must determine if you are or have been working at a Substantial Gainful Activity level. Second, determine if you have a medically determinable impairment or combination of impairments that are severe under the Code of Federal Regulations (20 CFR), and that those impairments significantly limit your ability to perform basic work activities. Third, determine if your impairments meet or medically equal the criteria of a listed impairment in the 20 CFR, and determine your Residual Functional Capacity (RFC), which is your remaining ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Fourth, determine if you have the RFC to perform your Past Relevant Work (PRW). And fifth, determine if you have the RFC to do any work that is available in the national economy. Please note that if there is substance abuse involved in your case, the ALJ must also determine if said substance abuse is a contributing factor to your disability.

Thus, during the hearing, the ALJ will begin by telling the Hearing Monitor to go "on the record," which means turn on the recording equipment. The ALJ will typically address some initial questions to your representative, then will swear-in yourself, the VE, and the ME if attending. Your representative may or may not make an opening statement depending upon the nature of the case. The ALJ's first line of questioning will typically be about your Past Relevant Work history going back 15 years. Then the ALJ will question you about your impairments and all exertional and non-exertional limitations, primarily focusing on your Activities of Daily Living (ADLs). After the ALJ is finished questioning you your representative will be allowed to cross-examine you, during which your representative will strive to clarify some of your comments and/or bring other issues to the ALJ's attention. Finally the ALJ will question the VE with medical/vocational hypothetical questions, and your representative will cross-examine the VE. You are typically allowed a final statement, and the hearing is concluded when the ALJ goes "off the record."