# Appeals: Hearing Skills Building Webinar – FAQs

## Office of Disability Adjudication and Review (ODAR)[[1]](#footnote-1)

### Q: What's the easiest way to get the disability CD?

**­**A: After a claim is denied, the electronic file is sent to the applicant’s SSA field office. Contact your SOAR point-of-contact at the field office, either by phone or fax to request that the disc to be mailed to your attention. Remember, a duly signed SSA-1696 must be on file, which allows SSA to send the CD to you. If no SSA-1696 is on file at the time of your request, the applicant must sign an SSA-3288 (Consent for Release of Information) which permits the disc to be sent to you.

### Q: ­Are exhibit lists the same nationwide?

A: Yes, SSA is federally administered, so exhibit lists are uniform across all ODAR offices.

### Q: ­I have a client who moved across the country. Should I suggest she find new representation?

A: Yes. You should notify SSA and DDS or ODAR, if applicable, about the change of address. SSA will forward the applicant’s electronic folder to the appropriate SSA field office or ODAR office for processing and case assignment. If the case has been scheduled for a hearing, it is possible to keep the hearing at the current ODAR for a Video Conferencing conducted hearing.

### Q: ­What does HALLEX mean? ­

A: HALLEX (Hearings, Appeals and Litigation Law Manual) is a publication from ODAR that contains policy statements from the SSA's Appeals Council, as well as procedures directed to lower levels of the SSA for carrying out the SSA's guiding principles

### Q: ­Is there a ruling/HALLEX/POMS/SSR that \*REQUIRES\* the ODAR scheduling staff to notify us ahead of time of scheduled hearings?

A: Unfortunately, there is no written standard on scheduling and rescheduling hearings. The good thing about SSA’s scheduling of hearings is that each hearing is given a specific time. The representative and applicant do not have to wait around for hours for the case to be called, as frequently happens in other types of courts. However, once SSA schedules a hearing it is reluctant to “continue” or postpone the case, since a continuance means a gap in the Administrative Law Judge’s (ALJ) schedule. As a result, most hearing offices will call the Representative up to 1-2 months before scheduling a hearing to be certain the Representative has no conflict. However, if Representatives use an ODAR office that does not contact the Representative before scheduling hearings, the Representative should certainly notify the ODAR office if they expect to be unavailable for hearings for more than a day or two. It is best to try to reschedule the hearing within the same month, whenever possible.

### Q: ­Are there trainings that help Representatives become court room ready?

A: There is a lot of information in the [SOAR Online Course](https://soarworks.prainc.com/course/ssissdi-outreach-access-and-recovery-soar-online-training%C2%AC) on assisting with appeals. You can also check with professional organizations, either nationally or in your state. NADR (National Association of Disability Representatives), [www.nadr.org](http://www.nadr.org), is one such organization. Local schools may also offer paralegal courses, or Law Schools or bar groups may offer CLE (Continuing Legal Education) courses. Also, please feel free to reach out to Pam Heine (pheine@prainc.com) at the SOAR TA Center.

### Q: ­When a claimant has a mental illness with onset due to drug abuse, like methamphetamine, are there any guidelines for documenting that the disability is independent of the drug use?

A: The best guideline is SSR 13-2p (<https://www.ssa.gov/OP_Home/rulings/di/01/SSR2013-02-di-01.html>). It provides a roadmap for evaluating disability when DAA is involved.

### Q: ­What can a claimant expect at an in-person hearing (e.g. environment, number of people involved, claimant participation, etc.)? What are the “do's and don'ts” during a hearing?

A: Please check this webinar from the SOAR TA Center which covered more about the day of the hearing. <https://soarworks.prainc.com/article/soar-webinar-hearing-tips-soar-practitioners>. You can also expect more guidance from the SOAR TA Center in the future. In the meantime, please reach out to Pam Heine at pheine@prainc.com for more information.

## On the Record Review (OTR)

### Q: ­When do you submit the request for an On the Record Review (OTR)? ­

A: A good time for the SOAR practitioner to request an “on the record” (OTR) review is at the time the Request for Hearing is filed, or shortly thereafter. An OTR request asks ODAR to consider approving a claim based on the documentation in the record. Since not every request leads to a hearing, this is a good time for the SOAR practitioner to request an “on the record” (OTR) decision. ODAR is always eager to review cases as early as possible in the hearing process.  So, if you think you have convincing arguments and you have recently filed for an ALJ hearing, submit your OTR memo.  Cases aren’t assigned to ALJs right away, but ODAR will look at a case if you bring it to their attention.  The ODAR Best Practices section on their website has some good suggestions for submitting evidence prior to ALJ hearings, and OTRs: <https://www.ssa.gov/appeals/best_practices.html#&a0=-1>. In addition, read more at <https://soarworks.prainc.com/article/alj-hearings-record>.

### Q: ­What is the average wait time for either Attorney Advisor (AA) Decisions or On the Record Review responses/processing?

A: The AA program allows AAs to issue certain fully favorable decisions on the record (OTR), when appropriate, before a hearing request is assigned to an Administrative Law Judge (ALJ). The AA program is an invaluable resource to assist in timely issuing of favorable decisions, when warranted, and reducing the backlog of pending hearing requests. These decisions are labor intensive and may go through a quality review. When an OTR is requested by the Representative, and the case is assigned to an ALJ, the ALJ can make an OTR decision. Timeframes vary widely, but can be anywhere from 1-6 months from the date of the ALJ request to an AA or ALJ decision. Read more here: <https://www.ssa.gov/OP_Home/hallex/I-05/I-5-3-21.html>.

##

## Working with Attorneys or Other Representatives

### Q: ­While an attorney is recommended is there any benefit to a client representing themselves?

A: No, it is our opinion that all applicants should be represented at the hearing by an individual who is knowledgeable about Social Security's decision-making process at the ALJ level, whether it be a lawyer, paralegal, or a SOAR case worker. Administrative Law Judges follow fairly strict rules about how to decide disability cases and what evidence can be considered. Although applicants can represent themselves “pro se” (i.e. “for oneself”), it is in their best interest to secure representation. The applicant may find it difficult to learn enough about Social Security law to advocate for themselves professionally at the hearing.

### Q: ­If a client has already been denied and he/she has representation (e.g.: an attorney) could a SOAR representative be of any help to the client or would the client have to start the process all over again?

A: Involving a SOAR practitioner at the hearing level can assist the advocate representing the applicant. Attorneys or non-attorney representatives can be excellent advocates for individuals applying for benefits and appealing denials. If a representative is already involved with an appeal, see if you can help by providing additional evidence or documentation. If an applicant wishes to dismiss his/her representative, he/she is permitted to do so. The representative may file a fee petition to SSA and if benefits are awarded may receive a partial payment based on work already completed at the time of withdrawal.

### Q: ­I submitted an appeal for a Veteran and an ALJ approved the appeal within 3 months without a hearing. I pointed out in the appeal that the notes from the facility were consistently contradictory.

A: ­ Great! The ALJ made what is called an “on the record” review decision. The ALJ had sufficient evidence in the case to make a fully favorable decision. ODAR is trying to reduce the backlog of hearing cases. ODAR prioritizes cases such as those for Wounded Warriors, those who are over 50 years of age, and those with serious mental illnesses. Your representation avoided many months (approx. 12) waiting for a hearing. Congratulations!

## Obtaining and Submitting Additional Medical Documentation to ODAR

### Q: ­ I advised the applicant’s treating sources at the VA Medical Center that I needed individual medical statements from specific doctors rather than standardized entries that are often contradictory and work against the client. Is this correct?

A: ­ Yes, we agree that the more descriptive the applicant’s medical records and progress note entries, the better picture DDS will have of the applicant’s symptoms. Even further, if the treating sources document disability by merely noting, “stable, same, no complaints, etc.,” this information does not give an accurate description for DDS’s purposes. For more information, here is a great resource called “[Documenting Disability](https://soarworks.prainc.com/article/documenting-disability-medical-providers).” You will find useful tips on educating doctors and other clinicians on how to write more effective treatment notes.

### Q: ­What happens if your client’s diagnosis has changed? I have a client that was sent to a specialist who disagreed with the initial diagnosis­.

A: Communicate the new medical impairment to DDS. This information is important for DDS to fully develop the case. Remember, DDS needs a diagnosis, but also needs to know how the diagnosis functionally limits the applicant. The severity of the functional limitations may still be the same despite the change in diagnosis. The new medical records must be submitted to SSA and/or DDS.

## Hearing Room Procedure

### Q: ­During the ALJ hearing, is it okay to have your client physically demonstrate simple movements to show physical limitations that records may not document?­

A: Not really.  There are many reasons for this. Firstly, hearings are tape recorded and physical movements won’t show up on audio.  As well, any physical limitations that are the basis of a disability claim must have medical records to back it up, not just an ALJ’s observations. Courts have discounted “sit and squirm” opinions from ALJs who “eyeball” the client, and say they have no back problems, for example, because they sit in a hearing for two hours in no obvious discomfort. DDS is supposed to consider the claimant’s capacity to perform work activities on a sustained basis, not just on what they can or cannot do on a one-time basis.  (See Social Security Rulings 96-8p and 96-9p) <https://www.ssa.gov/OP_Home/rulings/rulfind1.html#YRT1996>)

### Q: ­Do you recommend bringing an expert witness to the hearing such as the client’s therapist? ­

A: Think very carefully about asking witnesses to testify. You would have to interview the therapist and see how you think he/she would do under oath in a relatively formal legal setting.  The ALJ always wants to know: What will this witness testify about? What will the therapist say in person that he/she couldn’t say in written report?  Is the therapist an “acceptable medical source” or another type of medical provider? It may not be a good idea if the therapist will react badly to being cross-examined by the ALJ.

### Q: ­If the applicant is represented by an attorney (or other individual), does the applicant have an opportunity to speak for themselves or add to the proceedings?

A: Yes. The representative will ask the applicant questions which is called “direct examination.” This gives the applicant a chance to tell his or her story. Also, the ALJ will often begin the hearing by asking the applicant questions. Remember, the ALJ level is the first time the applicant is seen face-to-face by SSA. The earlier stages are paper reviews.

## Vocational Experts (VE)

### Q: What is the role of the Vocational Expert (VE)? ­

A: In order to address the question of whether an applicant is capable of returning to work performed within the past 15 years, the ALJ will generally call a VE to testify. The VE is usually a licensed professional counselor, a vocational rehabilitation specialist, or another professional whose career has involved job placement, career counseling and working with people with disabilities. Although the VE is called by the ALJ, the VE is neither a government nor an applicant’s witness. The VE’s task is to offer a neutral opinion based on (1) the evidence and (2) the ALJ’s determinations as to the applicant’s functional limitations.The VE reviews the documents in the file which pertain to work, e.g. detailed earnings record, disability report, and work history report. The ALJ will create a hypothetical for the purpose of eliciting the VE’s opinion on the applicant’s capacity to return to past work (Step 4) or perform other work in the national economy (Step 5). For more information on cross examining the VE, please contact Pam Heine at the SOAR TA Center**,** pheine@prainc.com. Read more here: <https://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-74.html>.

### Q: ­Why do Vocational Experts (VE) need to show that nationwide there is work a person can do, even if they do not live near the location of the jobs? ­

**A:** The job must exist in significant numbers in either the national or local economy where the applicant lives. Read more at[https://www.ssa.gov/appeals/public\_experts/Vocational\_Experts\_(VE)\_Handbook-508.pdf](https://www.ssa.gov/appeals/public_experts/Vocational_Experts_%28VE%29_Handbook-508.pdf).

## Sequential Evaluation and Residual Functional Capacity (RFC)

### Q: ­What if the claimant was working at the time their health started changing in a major way?

A: The applicant will not be denied at Step 1 of the Sequential Evaluation (Is the claimant working?) if the earnings are below SGA (Substantial Gainful Activity) which is $1,130.00 in 2016. SGA adjusts annually. Alleged onset date will be the date the applicant became unable to work at SGA levels.

### Q: ­How significant is an RFC (Residual Functional Capacity) assessment form in regards to appeals? I have read that it can be helpful if correctly filled out by the primary care provider.

A:  RFC forms are very useful and can be a vehicle for the treating source to provide medical opinion evidence, forcing the ALJ to consider it.  Sometimes the ALJ will discount the RFC form if he/she feels that it is not supported by the medical records.  For instance, sometimes a doctor will give the opinion that the applicant “can sit for 30 minutes” but nowhere in the medical record is there anything about this at patient appointments. So, be aware of that.  Also, be sure that the answers on the form are internally consistent.

### Q: ­Does one have to develop RFC evidence if the claimant meets a Listing? ­

A: No. Once DDS determines the applicant has met a Listing (at Step 3 of the Sequential Evaluation), DDS stops developing the claim for other impairments. DDS looks at the applicant’s RFC at Step 4 and Step 5. The applicant’s RFC is determined and compared to the physical and mental demands of the past relevant work (Step 4). When it is determined that the applicant cannot perform past relevant work, RFC, age, education and past work experience must be considered to determine if there is other less demanding work the applicant can do.

### Q: ­Can you tell me where to find these age/work history grids as well as listings you are referring to when you say "meet or equal a listing"?

A: Remember, Step 3 of the Sequential Evaluation is “Meeting or Equaling a Listing.” The Medical-Vocational Guidelines do not come into effect until Steps 4 and 5, which ask respectively, “Can the applicant perform their past work, and if not, can they perform other work in the national economy?” Read more at <https://soarworks.prainc.com/article/disability-determination-ssa-sequential-evaluation>

### Q: ­Where can I find the GRIDs that were discussed on the webinar?

A: The “GRIDs” are formally known as Medical-Vocational Guidelines and can be found here: [https://secure.ssa.gov/apps10/poms.NSF/lnx/0425025005­](https://secure.ssa.gov/apps10/poms.NSF/lnx/0425025005%1F)

### Q: If the applicant’s primary disability meets a Listing, e.g. Affective Disorders for Bipolar Disorder, will DDS need to spend time obtaining medical documentation for other impairments?

A: DDS needs to know all medical impairments, both mental and physical. DDS will determine which impairments meet or equal a Listing, or in combination may be found disabling. Remember, determining disability or proving disability is “reserved” for SSA. The SOAR practitioner’s responsibility is to submit or inform SSA of all medical sources known. With that said, DDS stops developing claim at the point it is determined the applicant meets a Listing. This is an internal DDS procedure, so you will not know until you received the notice of decision.

### Q: ­If a client meets a listing is it necessary to use the GRIDS (Medical-Vocational Guidelines)?

A: No. Once DDS makes a disability determination at Step 3 (Meeting Listing), then the DDS Adjudicator stops evaluating other impairments, and writes the favorable decision.

## Video Hearings

### Q: ­Are Video Teleconferencing (VTC) hearings really being heard quicker anymore? The wait time in my area is still taking about 2 years for a VTC hearing.­

A: Here is a link to SSA data on length of time it takes to get a hearing, by hearing office:  <https://www.ssa.gov/appeals/DataSets/01_NetStat_Report.html>.  You can also see how many video vs. in person hearings a particular office does. I don’t know how a particular office schedules video hearings vs in-person hearings, and if video hearings just go on a particular ALJ docket, or if there is a dedicated video docket. There is much local variation on this – I think while VTC hearings generally come up quicker, that’s in the context of long wait times for hearing scheduling generally.

### Q: ­Can the client go to the VTC ALJ hearing by him/herself? ­

A: It is our opinion that all applicants at the hearing level should be represented by someone who is knowledgeable about preparing and presenting claims at the ALJ level. ODAR will have a staffer who will assist with the equipment, but not much more than that. An advocate will be able to directly examine the applicant and cross examine any experts that are present, e.g. vocational and/or medical experts.

### Q: ­ I've got a new client who is scheduled for a VTC ALJ hearing, but he is stating that his attorney has "dropped" him and his case. I am unable to attend.

A: In this case, the applicant may object to the VTC hearing and ask for the hearing to be adjourned because the attorney “dropped” or withdrew from the case. The attorney likely sent communications regarding “withdrawing representation” via ERE (Electronic Records Express). A good ALJ will allow the applicant ample time to secure other representation. If you are the applicant’s case manager but not an Authorized Representative (via SSA-1696), the ALJ may allow you to explain the situation as a “witness” should the applicant be unable to explain it for themselves.

## Non-Hearing Related questions

### Q: ­Can an applicant work when applying for disability?

A: ­Yes! Remember, as long as the applicant’s earnings are below Substantial Gainful Activity (SGA) level the applicant is able to work. For 2016, the amount is $1,130.00 and this amount changes annually.

### Q: ­I recently met an 18-year-old that wanted to apply for SSI; however he has worked above SGA for the past 1.5 years. If he is no longer working above SGA, can he apply for disability if he chooses an onset date after his earnings dropped below SGA level?

A: Yes, he can apply for disability benefits, but the GRIDs are stacked against him at his young age. The real question is: how strong is his claim for benefits? Why did his earnings drop?  Did he voluntarily reduce hours/get laid off, or did he have to reduce hours due to his disability?  If the latter, documenting that fact from his employer would be useful to any claim for disability.

### Q: ­How do we get around the SSDI requirement of 40 quarter hours (10 years) work history when the client has not been able to hold down a position due to behavioral health issues, yet is also denied SSI because he/she is deemed not disabled enough?

A: SSI and SSDI medical determinations follow the same rules. SSI is a safety net program for individuals who don’t qualify for SSDI on their own earnings record, or others’ earnings records, e.g. parents. Remember, SSI has other non-medical eligibility criteria, e.g. income and resources, citizenship, etc., which applicants must meet before the SSI claim moves on to DDS for the medical determination.

### Q: ­If the client is about to be released from more than 18 months of jail and is going to be homeless as his family will NOT allow him in their home, can we use the dire need for faster help?

A: Yes, if the applicant satisfies SSA’s definition of homeless, (i.e., “literally” homeless), the claim will receive SSA’s homeless flag\* which expedites a claim. With that said, SSA is still experiencing case processing delays, so you should use the SOAR process in your area to further expedite claim.
\*Homeless Flag (Electronic Folder Flag) is added to the electronic folder "When it is alleged or apparent that the claimant is homeless." Source: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0410005005> - see section E.

### Q: ­How is it that work credits expire? And how long does it take before they do start to expire?

A: The SSA program which concerns “work credits” is Disability Insurance Benefits (DIB or Title II). To be eligible, an applicant (who is the wage earner) needs “insured” status which depends on the quarters of coverage that have been acquired as a result of gainful, “covered“ employment [FICA taxes]. A “quarter of coverage” is based on 1 of 4 calendar year quarters, i.e. the 3-month time period that ends on March 31, June 30, September 30, or December 31. A wage earner must have sufficient quarters of coverage to be “fully insured,” and therefore, entitled to DIB. The maximum quarters of coverage needed is 40, but 6 quarters of coverage are required at a minimum. In addition to being fully insured, the wage earner must also be “currently insured.” This is the part of your question about “expiring credits.” For the period of 40 quarters immediately preceding disability, the wage earner must have a least 20 quarters of coverage in that 40 quarter period. This is the “20/40 rule.” In other words, the wage earner must have worked steadily and fairly recently until disability. Insured status will lapse if she or he stops working, or becomes disabled, and fails to earn quarters of coverage for 20 quarters (about 5 years). So, if the wage earner did not work steadily during the 40 quarter periods, the insured status lapses sooner than 5 years. The wage earner must be fully insured at the time of becoming eligible in the first full month of becoming disabled. Lapse in insured status means that the wage earner is not eligible for disability insurance benefits. The date that the insured status lapsed becomes critical for establishing that disability began before that lapsed date in order to be eligible for DIB. The SSA field office can compute the wage earner’s date last insured, also known as “DLI”. Note: quarters of coverage are computed differently for younger wage earners. Read more at <https://www.ssa.gov/oact/progdata/insured.html>

### Q: ­In terms of the consultative exam, is there a federal minimum amount of time they are supposed to examine the client? If yes, is this commonly brought up as a defense in an ALJ?

A: Yes, 20 CFR 404.1519n specifies minimum times for various exams, e.g. General Comprehensive Internal exams, 30 minutes; Comprehensive Musculoskeletal or Neurological, 20 minutes; Psychological Exams, 60 minutes. You may object and discredit a CE at the hearing or in your legal brief. Read more here: <https://www.ssa.gov/OP_Home/cfr20/404/404-1519n.htm>.

1. The Social Security Administration’s [Office of Disability Adjudication and Review](http://www.ssa.gov/appeals/) (ODAR) administers hearings and appeals for people seeking reviews of their applications for disability benefits. [↑](#footnote-ref-1)