

Disability Newsletter

Dempsey, Dempsey, and Moelling
Disability Advocates in Illinois and Missouri

Veteran Disability Cases

Our Veteran Disability practice continues to grow. It isn't surprising. According to a report in [Military Times](#), 6 in 10 VA claim denials are in error. The Veteran's Administration is required to tell veterans what evidence is needed to substantiate their claims. However, without assistance, a veteran may not be able to decipher what it is that the VA needs. Our office assists veterans in providing the best evidence to advance their claim. In addition to our attorneys and paralegals, we have a military historian on staff to assist in documentation.

The delay at the Regional Offices in Chicago and St. Louis continues to grow. If you know a veteran who has been denied benefits from the Veteran Benefits Administration, he or she should seek representation as soon as possible. This will ensure that the representative can make a strong argument and advise the veteran on the best practices for ensuring a favorable decision.

We have been successful in getting compensation benefits for World War II, Korean, Vietnam, OIF and OEF veterans and their dependents. Our VA department has the experience and patience to handle Veterans' claims. Please advise your Veteran patients and clients to contact us for a free consultation.

West Central Illinois and Northeast Missouri Social Security Disability Cases

Hearings for Social Security Disability and SSI claimants in our area have bounced from office to office like a ping pong ball in a tornado. As of this writing, the Columbia, Missouri Office of Disability Adjudication and Review is nominally the office in charge of this region. However, they have deferred every

case heard in the past six months to the newly-established St. Louis National Hearing Center which began sending judges to Hannibal this summer. Columbia is scheduled to start hearing cases within the next couple of months. The typical judge in the Columbia office has 1 year of experience as a judge.

The waiting time for hearings in Missouri and Illinois is unchanged. Illinois cases are taking approximately 24 to 26 months from application to hearing. Missouri cases are running 21 to 23 months.

Why do we prefer to do the applications for our Social Security clients?

There are a number of myths out there about applying for Social Security Disability and SSI benefits. Some people think that everyone gets denied on application and that the application is a meaningless first step. Others think that an attorney only gets involved at the hearing level. In fact, in some cases, the initial paperwork can be a critical factor and relatively simple errors can derail an otherwise "good" disability case.

An applicant is asked to fill out several very important forms upon applying for benefits. One is called a Function Report and deals with activities of daily living. It is a form with many boxes to check. The other is a Work History Report. We go over these for our clients. Here is a simple common example of what we encounter.

Mr. Smith has had two lumbar surgeries. He checks the box on the Function Report stating that he mows the yard. He adds nothing more. When we contact him, he tells us that he can only use a riding mower. He has not used a push mower for three years. Due to the vibration from the mower, he can only ride

for twenty minutes a day and that he must lie down for an hour or more after each outing. He is telling the absolute truth that he mows the yard, but what he actually does is very different than what the people at the SSA will see when they read his answer.

Mrs. Jones is 57 and has rheumatoid arthritis. She states that at her job at the factory she only lifted ten pounds. When we contact her and inquire further, it turns out that in fact she had to lift tubs containing six five-pound items from a cart to her work station daily. In addition, at the end of the work day she had to sweep the work area, carry a trash can 50 yards, and dump the contents into a dumpster. Her job was actually performed at the medium level, not the light level as she described. At age 57, she has to prove she cannot do jobs she has performed in the past 15 year or jobs she can do with the skills she has picked up along the way. This simple error can destroy her case.

As Social Security Disability benefits do not become payable until the sixth full month after the date a person becomes disabled, that means when we are able to get someone benefits on application within that time period our fee is zero. We work for free. It happens to us regularly and we are prohibited by law from accepting the money that clients frequently offer us. It is, however, great PR for our firm. The benefit for our firm in doing applications is that we go to hearings with cases that have been prepared correctly from the beginning and win a higher proportion of them.

Advanced Practice Nurses and Physician's Assistants

That the Social Security Administration lags behind the times is news to no one, but the manner in which they treat Advanced Practice Nurses and Physician's Assistants is appalling. Under a strict reading of the regulations (20CRF 404.1502 and 416.902) the opinions of treating nurse practitioners is given little weight. Under current regulations, "acceptable medical sources" are limited to licensed physicians (MDs and DOs), Licensed or certified psychologists,

optometrists, podiatrists and speech-pathologists.

Many of our clients do not have a choice as to the provider they see. They are lucky to see the nurse practitioner provided to them. They receive excellent care from skilled professionals collaborating with physicians. Although both Missouri and Illinois regulate the practice of medicine and have empowered APNs and PAs to see and treat patients, the Social Security Administration doesn't recognize their ability to diagnose, prescribe, and assess prognoses.

We very much appreciate the fine care provided to our clients by the APNs and PAs in the area. We have written letters to congress urging them to address this injustice. We are seeking to raise the issue on appeal to see if we can get the courts to order Social Security to change its archaic position. We will keep you posted on developments.

A Verbatim Transcript from a Hearing

We know that those of you in the health and social service fields frequently don't understand why the Social Security system is as capricious as it is. It is difficult to understand why some people get benefits easily and others struggle for years. The fact is that many judges are both very poorly trained and know little medicine. They bring their prejudices into the hearing room. The following is an actual transcription of a second hearing. We took this case all of the way to the Seventh Circuit Federal Court of Appeals. We won a remand there. Unfortunately, under the rules, a case is remanded to the exact same judge who heard the case before.

Those of you with even a modicum of understanding of mental health will find this appalling. The following takes place after the judge has called the guy a tax cheater for not declaring the money he received when working at his family's salvage yard as a young man and then berating him for not telling his physical doctors about his depression and only telling his mental health doctors:

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JUDGE And we have talked about suicide
WITN. yes
JUDGE So, you think about it every day.
WITN. Yes
JUDGE And so, why don't you?
WITN. Why don't I?
JUDGE Yeah. And I don't mean that in
WITN. To be –
JUDGE In a mean way. I'm not –
WITN. Right
JUDGE Trying
WITN. I understand
JUDGE You know
WITN. I – the –
JUDGE You ought to go out and do it
WITN. To be honestly
JUDGE I'm just saying
WITN. Truthful with you
JUDGE What, what is it – why, why don't
you?
WITN. I've --- because I've lost three of my
best friends to suicide. I think, the most part,
that's what keeps me from it. I think you're –
it's a coward's way out, and I'm the first one to
believe that. I know it's wrong. It's against, it's
against God. But at, at the same time, it
doesn't keep a person from thinking about it or
doing it.
JUDGE okay
WITN. you know
JUDGE so what's your meaning in life?
WITN. my meaning in life?
JUDGE yeah
WITN. to be a better person. I mean I've
JUDGE Well, who are you there for? What,
what can you do that nobody else in life can do?
WITN. What can I do? Probably not a
whole lot. I mean, when I – just like when I say I
want to commit suicide
JUDGE Who can, who can be the
grandfather to your grandchildren
WITN. right. That's that is what stops me
JUDGE who can be
WITN. a lot
JUDGE husband to your
WITN. right
JUDGE wife
WITN. But, your Honor, when you put
yourself in my shoes, It's hard for me to deal

every day with that. I know, I know it's a
coward's way out to do something like that.
Who, who's going to be the grandfather of my
children. You say you're not – that you're
worthless, but I know – my mom tells me,
you're not worthless, you know, but you don't
feel that way. You know, that's --- it's not, it's
not that way. It's a whole different concept of,
of – you know. And I think a lot of people that
committed suicide, I think, if there was a way
back, I think people would come back. You
know, they do it on a spur of a moment.
JUDGE Okay. All right, those are all my
questions.

The judge denied the case again. We
are in the process of appealing. In the
meantime, our client continues without income
and is only able to access charitable healthcare.

Thank you, as always for the kind
treatment and services you provide to our
clients. Thank you especially to those of you
who fill out Medical Source Statements for us.
We cannot overstate the importance of these to
our clients.

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