



# When and How to Appeal a Social Security Denial

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# About Adriane S. Grace

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- Attorney
  - 13+ years devoted to Social Security law
  - Current: Managing Attorney at Law Office of Adriane S. Grace, PLLC
- Practice Areas
  - Estate Planning (Wills & Trusts & POAs, Special Needs Planning)
  - Probate & Estate Administration
  - Social Security Applications & Appeals
  - Guardianship and Counseling on Alternatives, Supports & Services, and Public Benefits

# What are we going to talk about?

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- The Appeal Process (high level)
- Deadlines for an Appeal
- The 5-Step Sequential Evaluation Process
- Common reasons for being denied and how to handle



# Stages of a Disability Claim

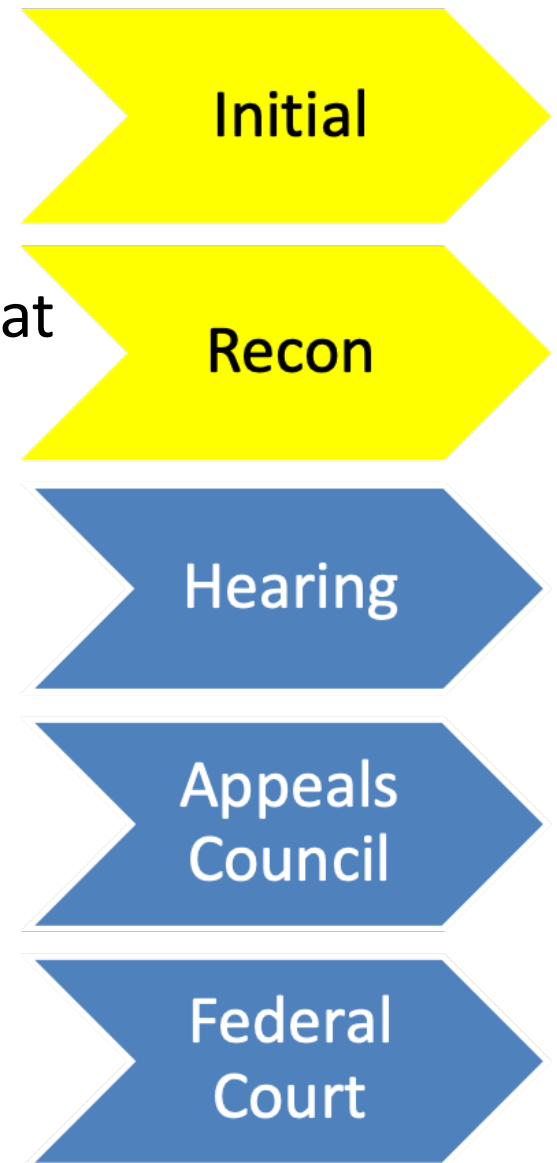
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## Local FO/DDS

- SSA contracts with state agencies to make decisions at these stages
- Decisions take 2-6 months and most are denied at the first 2 levels
- No opportunity for personal advocacy

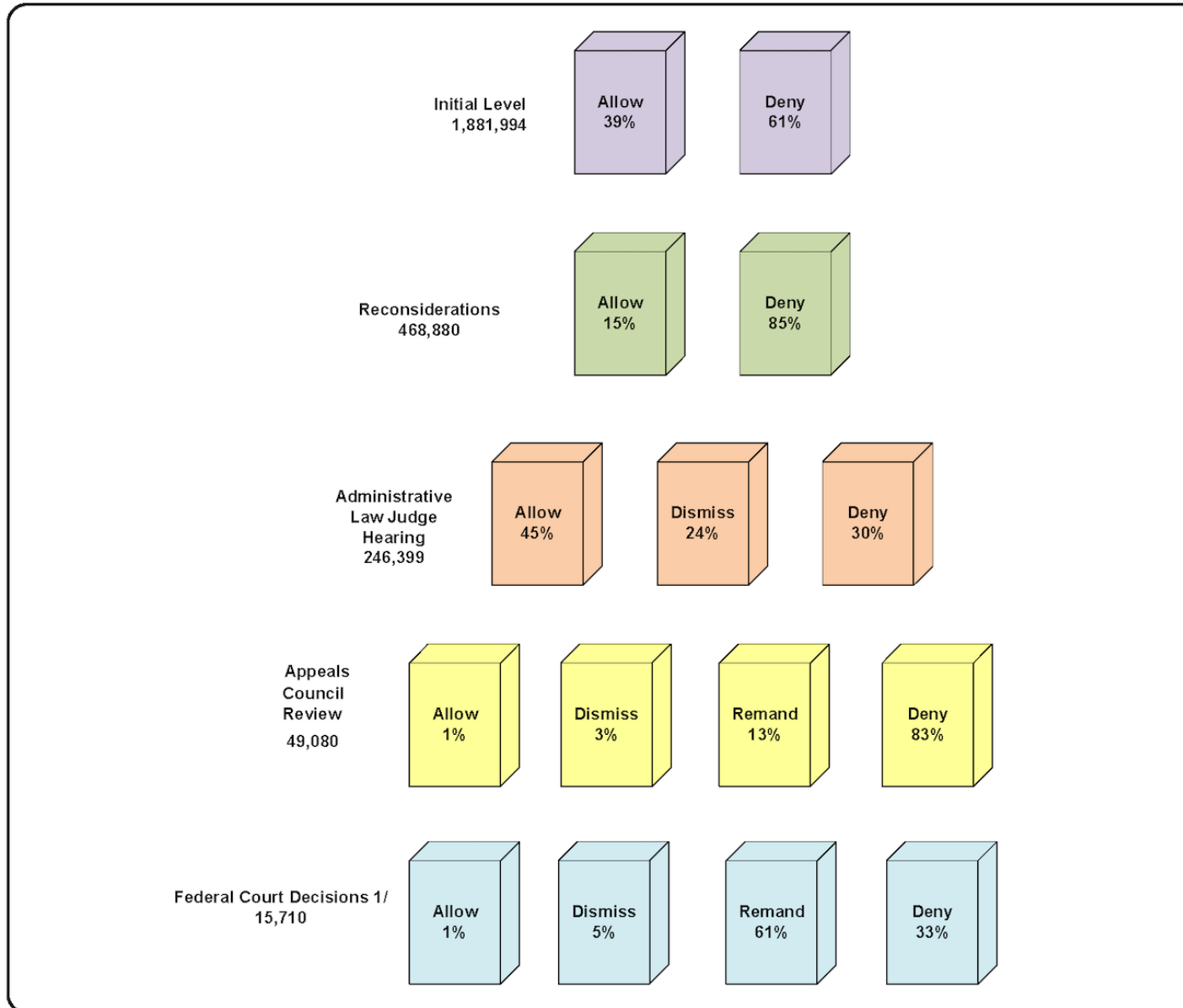
## SSA/Agency Action

- Statistically better chances of being approved
- Opportunity to advocate in front of a judge/decisionmaker
- Wait time for a decision is about a year
- Appeals Council decision is final agency action



# FISCAL YEAR 2023 WORKLOAD DATA: DISABILITY DECISIONS\*

Continuing Disability Redeterminations (CDRs) are not included  
except for Federal Court Level



# Deadline for Appeal at SSA

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- All decisions and determinations are mailed via regular U.S. mail
- Deadline: 60 Days plus 5 days (the amount of time they budget for a claimant to receive their denial letter in the mail)
- Good cause for missing an appeal deadline:
  - Illness that resulted in a hospitalization
  - Letter mailed to the wrong address
  - Inability to understand the appeal process due to cognitive impairment (usually limited to claimants with intellectual disability)
- **Res Judicata/Agency Finality if appeal deadline missed!!!**



# Where to Appeal a Denial

- Online (**Recommended! YES! DO THIS**)
  - Go to ssa.gov Call SSA and navigate to the page

The screenshot shows the Social Security Administration website. The top navigation bar includes the Social Security Administration logo, the text "Social Security", and dropdown menus for "Benefits", "Medicare", and "Card & record". There is a search bar with "Search SSA.gov" and a magnifying glass icon, and links for "Español" and "Sign in". Below the navigation bar is a blue banner with the text "Securing your today and tomorrow". The main content area is divided into three columns: "Prepare", "Apply", and "After you apply". The "Prepare" column includes links for "Check eligibility for benefits", "Get a benefits estimate", and "Plan for retirement". The "Apply" column includes links for "Apply for benefits", "Sign up for Medicare", and "Apply for SSI". The "After you apply" column includes links for "Check application or appeal status" and "Appeal a decision we made". The "Appeal a decision we made" link is circled in red. A red arrow points from the "Social Security" text in the navigation bar to the "Appeal a decision we made" link.

# Other Ways to Appeal

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## **Less desirable, but available methods for appeal:**

- By Telephone
  - Call SSA at (800) 772-1213 and request to start an appeal
  - Tip: call well in advance of your appeal deadline!
- Visiting the Field Office In-Person (NOT Recommended)
  - Make an appointment
  - AVOID the first of the month



# Info to Provide SSA for Appeal

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- List of doctors who have treated the disabled person since the last time they reported to the agency, including all hospitals and emergency rooms where they were treated
- Current medication list (who prescribes, side effects experienced)
- Changes in medical condition and new diagnoses

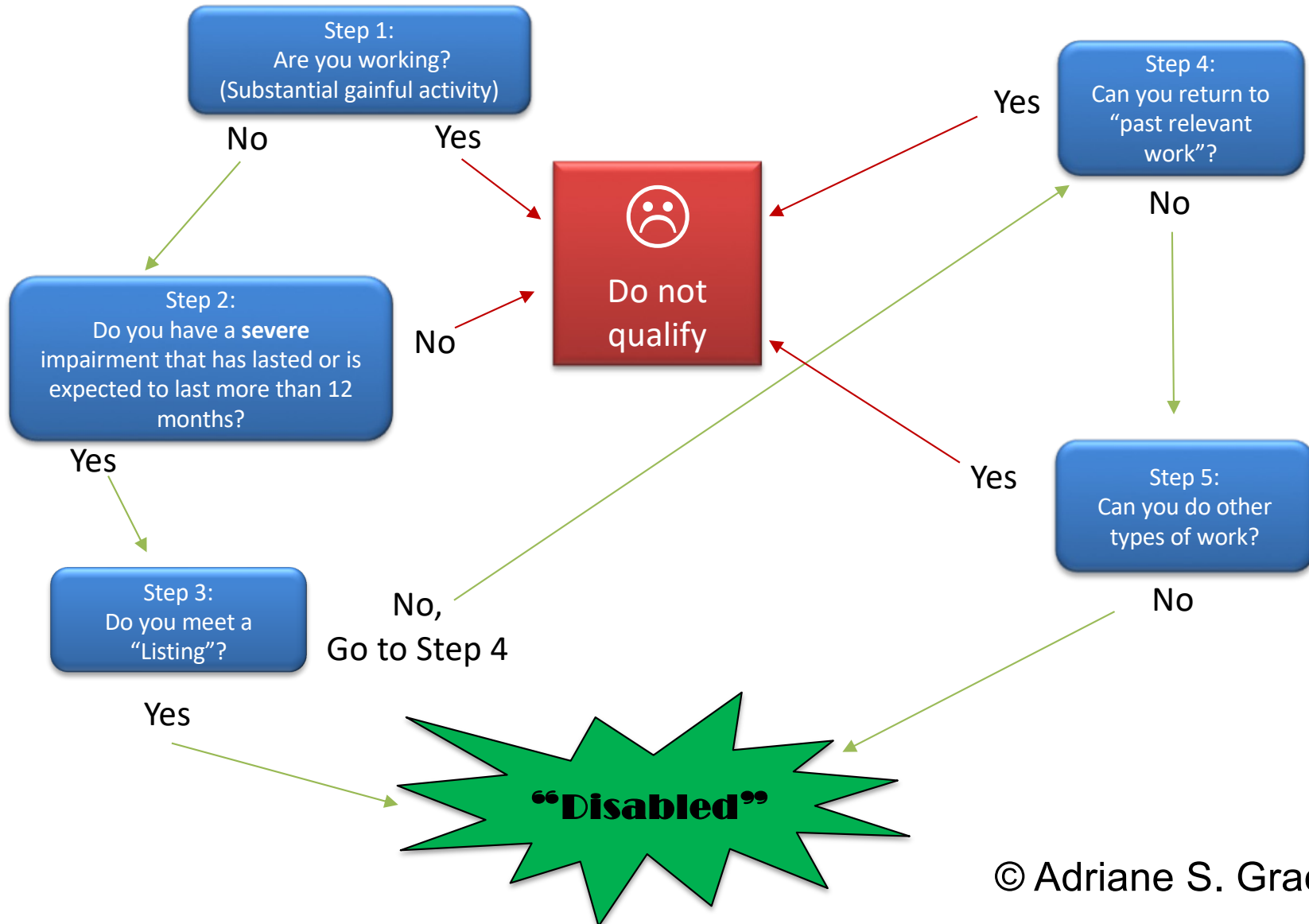
# Forms to Complete for SSA Appeal

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- SSA-561-U2, Request for Reconsideration
- HA-501, Request for Hearing with ALJ
- 827, Authorization to Disclose HIPAA to SSA
- 3368, Disability Report listing all treating docs
- 3369, Work History Report
- 3373, Function Report
- How to Find Forms by Name and Form Number: <https://www.ssa.gov/forms/>

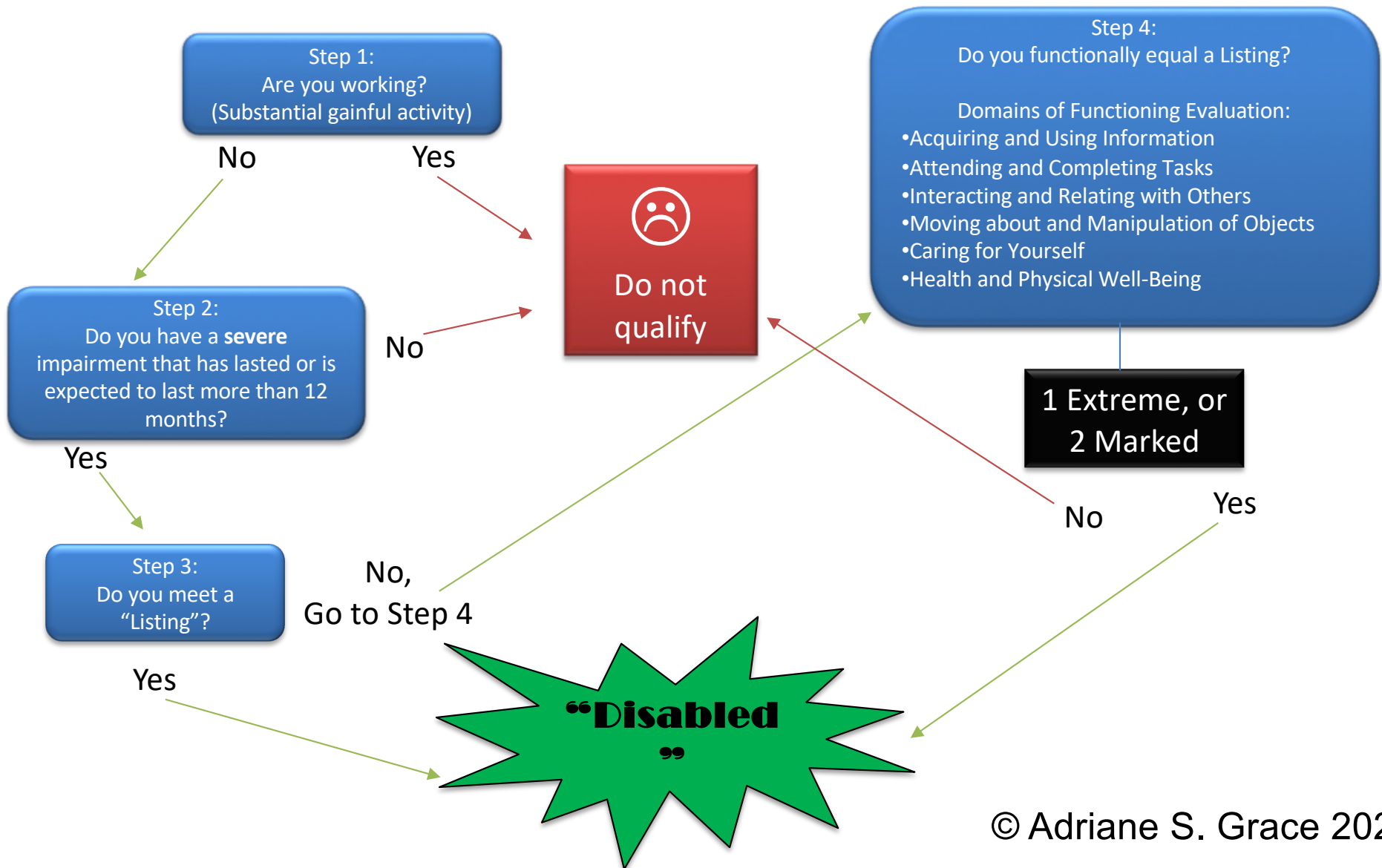
# How SSA decides “Disability”

## 5-Step Sequential Evaluation Process (Adults)



# How SSA decides “Disability”

Sequential Evaluation Process for Children under 18 yrs old



# Steps 1 and 2 (child and adult)

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- Step 1: Substantial Gainful Activity?
  - \$1,550 a month in 2023 for non-blind employees
  - Rules for self-employment are different
  - Unsuccessful work attempts not counted (less than 3 months of employment)
- Step 2: Severe impairment
  - More than minimal limitation in activities of daily living
  - Lasting 12 months or more, or expected to last more than 12 months
  - Combination of impairments considered

# Step 3: Meets or Equals “Listing”?

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- A person will be found “Disabled” at Step 3 if:
  1. They have passed the first two steps in the sequential evaluation process AND
  2. They have an impairment so severe that it meets or equals a Social Security “Listing” for that impairment
- The Listing of Impairments are found in 20 CFR Part 404, Subpart P, Appendix 1
- Separate Listing for Adults and Children under 18
- A medical doctor must provide an opinion that a person meets or equals a Listing
  - SSA employs doctors at the state Disability Determination Services who review the medical records received and render an opinion.

# Step “3.5” (Adult Only): RFC

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- For adults who passed steps 1 and 2, but don't have impairments that “meet or equal” a Listing at Step 3, the adjudicators determine their “Residual Functional Capacity” (RFC) and use it to answer two questions:
  1. *Can the person return to “past relevant work” (PRW)? (Step 4)*
  2. *If not, is there other work this person can do? (Step 5)*
- RFC is a determination made by an adjudicator, but must be based upon the opinions of medical doctors
  - Doctors employed by the state Disability Determination Services
  - Doctors paid by SSA to examine the disability applicant and provide an opinion
  - Doctors who treat the disability applicant and provide an opinion
- RFC is a statement of the person's maximum physical and mental capability to engage in work

# Step 4 (Adult)

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- At this step, the adjudicator answers the question, can the person return to their “past relevant work” (PRW) given their RFC?
  - PRW = jobs performed in the 15 years prior to application, at SGA level, and long enough to learn the skill level for the job
  - If the physical and/or mental demands of PRW EXCEED the RFC, the disabled claimant passes Step 4
- Persuasive Evidence for this step
  - Medical Records & Opinions from long term treating physicians (pediatrician/PCP, psychiatrist, neurologist)
  - Psychological Evaluations
  - Intellectual Assessments



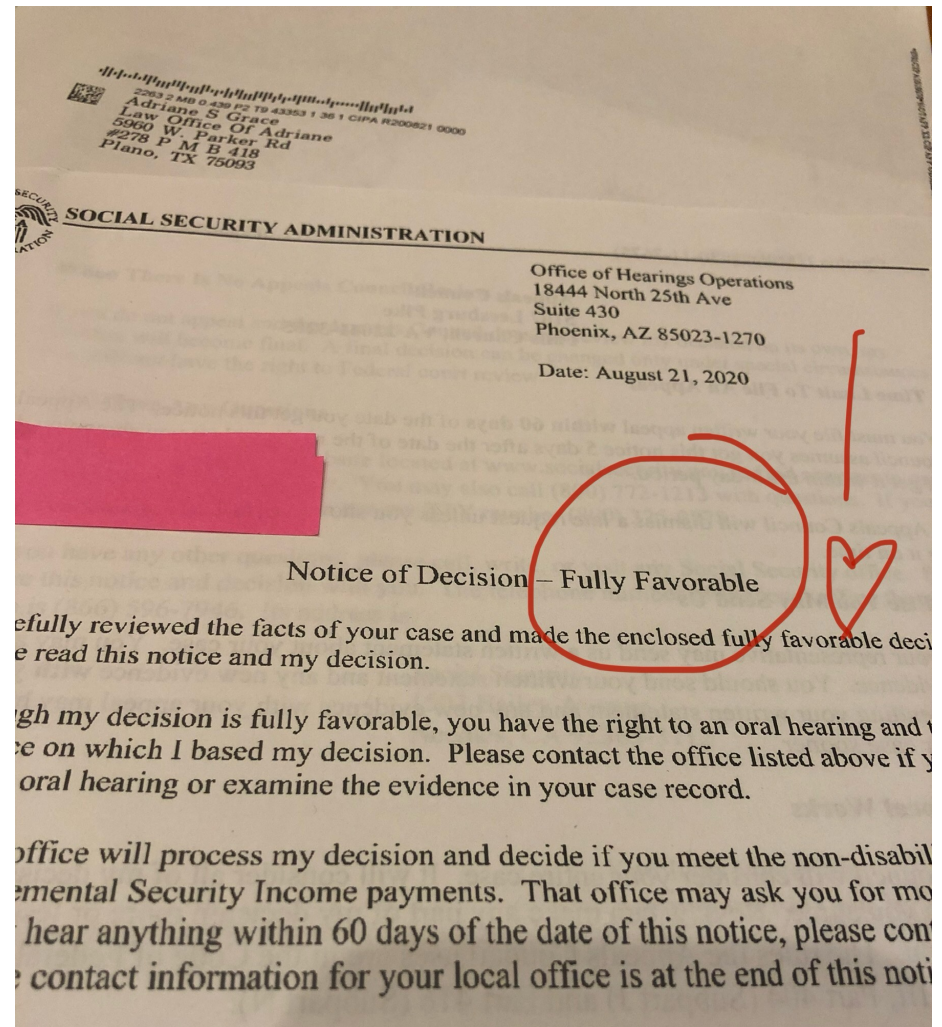
# Step 4 (Child)

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- If you don't meet a Listing, does your impairment "functionally equal" a Listing?
- Social Security Domains of Functioning Evaluation using 6 Domains:
  - Acquiring and Using Information
  - Attending and Completing Tasks
  - Interacting and Relating with Others
  - Moving about and Manipulation of Objects
  - Caring for Yourself
  - Health and Physical Well-Being
- Need a determination of "Extreme" limitation in one of the Domains or "Marked" limitation in 2 domains to be found disabled.

# Step 5 (Adult Only)

- The adjudicator determines whether there are other jobs in the national economy the person can perform
  - “Grid” rules using RFC, age, education, and PRW skill level
  - If no grids rule applies, the agency obtains the opinion of a vocational expert (VE).
  - VE can testify as to the categorization of the PRW to the Dictionary of Occupational Titles, whether claimant has transferable skills, and whether there are other jobs the person can perform.



# Common Denials at Each Step

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- **Step 1:** Claimant engaged in SGA
- **Step 2:** lack of medical evidence/SSA was not provided  
Treating Info. or claim was truly frivolous (does not meet the 12-month rule)
- **Step 3:** Medical condition does not equal a listing  
BUT Evaluation continues to Step 4
- **Step 4:** Claimant has PRW as an unskilled, sedentary worker and medical condition does not affect loss of use of Upper Extremities or vision
- **Step 5:** Claimant does not “Grid out” and VE finds other jobs claimant could do like an unskilled, sedentary job (<50 yrs old)

# Should I hire a representative?

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- NOSSCR lawyer referral service: 845-682-1881 or [nosscr.org](http://nosscr.org)
- Representatives can collect medical records and other evidence, help you complete forms, talk to SSA for you, write briefs and motions, advocate for you at a hearing, counsel you throughout the process
- Representatives at the agency level can be attorney or qualified non-attorney (must be competent)
- Fees: in most cases, 25% of back benefits up to \$7,200, but it's important to understand the agreement for your case

# Representative Forms to Complete for SSA

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- 1699, Representative Registration and for Direct Payment
- 1696, Appointment of Representative
- 1693, Fee Agreement
- 1560, Fee Petition

# Questions?



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