

INTRODUCTION TO MIGRAINE & DISABILITY

Increasingly, severe & frequent migraines are being considered as grounds for winning a disability case, however it is still an uphill struggle since migraine disease is not one of the conditions actually listed by the Social Security Administration (SSA). The closest condition in terms of limitations and functional capacity is epilepsy which the SSA has listed. Bearing that in mind, to help your disability case you need to include any other disabling and conditions so that the SSA may consider their cumulative effect. It is normal for people with migraine to have comorbid conditions. In addition, migraine often contributes to anxiety or depression, so be sure to include medical evidence for that if it is relevant for you.

TO DETERMINE ELIGIBILITY

In order to determine eligibility, the SSA will do the following things:

- Look at your daily limitations
- Consider the frequency and severity of your migraine attacks
- Consider any other medical conditions which limit your ability to work
- Examine your employment options, not only previous work experience but anything else you might possibly be able to do.
- Review your medical evidence

IMPORTANT TIPS WHEN FILING FOR DISABILITY OR APPEALING A DENIAL

Filing and winning a disability claim can be a lengthy, exhausting and discouraging process. You do not need a disability attorney to file a disability claim or to appeal any denials. However, it is important to understand the complex nature of the disability application process and necessity of filing everything exactly as required.

Following are some tips that are key to helping your case:

1. **Medical Records:** Build a migraine history as well as a complete health history by documenting everything and getting all your medical records from each doctor as soon as you see them. Some states have limits on the amount of time they keep medical records, so it is important to get them as soon as possible and keep them organized.
2. **Requesting Copies of Records:** If you are appealing a disability case then in many States you are legally entitled to one FREE copy of your medical records from every doctor until your case is approved! For each doctor or clinic put your request in writing, explain that you are appealing a Social Security disability claim, and include proof of that appeal. Tell them that you are allowed one free copy of your medical records and would like to know how soon they will be ready for you. Repeat every time there are new records. If an office worker tells you that they have to charge you, then ask to speak to the office manager and explain your rights as someone appealing a disability claim. [CLICK HERE](#) to see if your state has a law about medical records and disability.
3. **Doctor Assistance:** Ensure your doctor supports your claim and will be willing to complete forms and letters as needed to help your case. Make sure you have at least one doctor on your side who will be willing to complete forms and letters explaining your limitations and why. Preferably two doctors, your primary care doctor and at least one specialist. It is especially important that your neurologist explains what happens during a migraine attack and how that impacts your functioning.
4. **Work History:** Detail your work history and include examples of why you can no longer do this work
5. **Provide Information:** Educate the evaluator and/or judge on migraine; presume they know nothing about genetics, symptoms, severity, duration or progression. Outline every symptom you experience at

every stage (prodrome, attack, postdrome) and show how they affect your daily functioning and ability to work. Be specific about your disability and thorough in describing your level of impairment.

6. **Comorbid Conditions:** Include any disabling conditions that you have in your claim. That often means not only migraine but autoimmune diseases, seizures, osteoarthritis, etc. Include anything that impacts your ability to work with a focus on no more than three to four most disabling conditions.
7. **Independent Medical Examination:** If you get sent to a Social Security doctor for an IME make sure that immediately after the appointment you write down exactly what happened. Include how long you were there, how long you actually saw the doctor for, whether the doctor asked you any questions or looked at your medical records while you were there, and whether the doctor examined you or not.
8. **Employment Limitations for Any Job:** Be ready to explain why your medical condition prevents you from working any job for which you may be qualified or educated, no matter how basic. This means not only past jobs you have performed, but also any job that a vocational specialist may suggest. For example, can you be a parking attendant? If not, why not.
9. **Medical Appointments:** It is important to show how many medical appointments and tests you have on average per month? It is a good idea to keep a spreadsheet or table of all your medical visits so that you can add this to your medical record and give it to a judge if your case gets that far.
10. **Monthly Migraine Days:** How many days in a month do you have disabling migraines that prevent you from working? It is crucial to keep a migraine diary and go back as far as you can. Then print those reports out and include them in your file. Be diligent to keep these records all the way through the finalizing of your claim so that you can present evidence of how frequently you would be absent from work or actually were absent from work.
11. **Describe a Migraine:** Describe what happens when you have a migraine. Not only the pain, but any other symptoms including nausea, vomiting, loss of vision, hypersensitivity to light/sound/smell, fatigue and anything else that happens during any of the four stages of a migraine attack (aura, prodrome, attack, postdrome).
12. **Migraine Triggers:** Include a list of triggers, especially ones that are out of your control such as weather changes, perfume, cologne, fluorescent lighting, etc.
13. **Medications:** Write a list of all the medications that you have taken in the past and currently take for migraine, both preventative and abortive. Note frequency of use, short term side effects, long term side effects, accessibility, etc.
14. **Disability Lawyer:** One of the options you have is to retain a disability lawyer. It is common for people to file initially themselves and then retain an attorney after being denied once or twice. While it seems unjust that an attorney may be needed to help access necessary benefits that you have paid into through your employment history, it can often save years of worry, exhaustion, missed deadlines, incorrect or missing information, and frequent denials. Note: Disability attorneys are only paid if they win your case, and there is a federal law that limits their fees to the LESSER of 25% of your back benefits or \$6,000. The only fee that can be requested upfront is the cost of getting your medical records, but you have the option of getting those records yourself and avoiding that fee altogether.

FUNCTIONAL LIMITATION ARGUMENT

The argument used most often and successfully in migraine disability cases is the “functional limitation argument.” A functional limitation is defined as “a substantial impairment in a person’s ability to function in the condition, manner, or duration of a required major life activity.” It’s important that your medical records include specific details about how migraine interferes with your ability to perform on the job. When you build your case around this argument, you claim that the frequency, severity, and duration of your migraine attacks reduce your ability to perform simple or even entry-level tasks—thus, leaving you unable to do any type of work. For example, you want your treating doctor to include the following type of information in your records should you have to continue working:

- You will have multiple unexcused absences from work every month
- You will need excessive breaks from work—often more than three during a normal work month
- You need low stress activities

- You don't know when your migraine attacks will occur—making them unpredictable
- You will have many unscheduled bathroom breaks during the course of a normal work day
- You will be unable to concentrate or pay attention for several hours during a normal work day
- You will be unable to perform work tasks at a reasonable, required pace
- You may experience side effects from your medication including sedation, nausea, vomiting and dizziness.
- You may be unable to finish a workday without interruption from symptoms
- You may need to lie down during each work day for an unspecified length of time

CREDIBILITY & HONESTY

Bear in mind that your credibility is really important, especially when dealing with subjective conditions such as migraine and other chronic pain. If the judge or examiner doubts that you are telling the truth in any area, then it will hurt your chances of being approved. Some judges have been known to ask “trick” questions that they already know the answers to in order to test your credibility. Here are some tips:

- Try to stay away from absolutes and exaggeration, but make sure you give time and activity limits as well as describing how your activities are different from how you used to do them or which activities you can no longer do.
- Describe how many good days you have each month and how many bad days.
- Describe what a good day is like and what a bad day is like.
- A letter may be necessary from your spouse to testify about your impairment and what level of care he or she has to provide since you are incapable. (e.g. cooking, cleaning, driving, carrying groceries, heat pad, etc.)
- It may also be helpful for your spouse to be a witness at your hearing (the judge may or may not decide to call your spouse into the hearing but having them there in case may be beneficial).

Here are some examples of questions the judge may ask you to test your credibility:

1. **“Do you drink?”**
If you drink, even occasionally, don't say that you don't drink. This information may be in your medical records! Be honest.
2. **“Are you responsible for taking care of your children?”**
If you have minor children and you say that you don't cook, clean or go to school functions, be prepared to explain who takes care of your children.
3. **“What do you do during the day?”**
You are not expected to sit around in bed 24/7, 52 weeks per year, so don't say that you do, even if it is close to true or it feels like it! Bear in mind that if your activities sound like a “job” then it will be harder to win your case.
4. **“Do you do any housework or cooking?”**
Vacuuming is often a specific question, or daily large family meals. If your home is dirty and messy because you are unable to clean, then say that. If your spouse has taken over childcare, then explain that also.
5. **“Do you attend school functions?”**
Be prepared to explain how this works for you, whether you have to cancel frequently, or if you are sick afterwards.
6. **“Do you attend church functions and/or volunteer?”**
Let them know if you frequently cancel, are sick afterwards, or have completely stopped these activities.
7. **Do you drive a car?”**
If you have taken any trips within the last year or so that required sitting for more than 30 minutes explain what happens or could happen. Explain if you have had to limit travel, why, and how you get to doctors' appointments.

8. “How long can you sit?”

If you say only 15 minutes but then sit for an hour at the hearing that is obviously a problem and it may impact your credibility in the eyes of the judge. Be willing to explain any trips where you had to sit for long periods of time. **For example**, ‘I try to get my husband or other people to drive me on essential long trips, and I may need to stop during a trip and/or take strong pain medications. After a long trip I am always in a lot of pain for two days afterwards and have to remain in bed.’

MEDICAL EVIDENCE

There are five categories of medical evidence that can help your case a lot stronger:

1. **Objective Medical Evidence:** MRI, CT Scan, EMG, etc. For migraine these are not normally available, but if you have other comorbid conditions that can be seen on imaging or tests then include them.
2. **Medications:** These are essential cliff notes to your case. Heavy duty medications show the judge you have an ongoing serious problem. Ensure that you have a list of all your medications, dosage, prescribing doctor, and side effects. Pay a lot of attention to this!
3. **Surgeries:** If you have had surgery or nerve blocks this is important.
4. **Mental Health Issues:** Include medications taken for this, doctors seen, diagnoses, inpatient care and/or suicide attempts.
5. **Non-Medical Statements:** These are statements corroborating your health information and symptoms by former coworkers, supervisors, family members, etc. These statements are much better when they come from non-relatives or friends, although these can also be beneficial.

WHAT DISABILITY JUDGES LOOK FOR

1. The judge is most concerned about the 2-3 year time period before your alleged onset date, even if you were working, plus any records going forward from that. It’s really important that you have regular doctor visits, no matter how exhausted you are or how much pain you are in.
2. If you have a lifelong condition then go back as far as you can. This shows the progression of the disease. Continuity of treatment is a positive thing for SSA. The challenge is that it can be difficult to find these records and sometimes it is impossible to get them. Whatever records you have can be helpful, especially if one record references another from a prior time. Bear in mind that if you have a hearing in front of a judge, they may ask what happened that you were able to work before with your long-term medical condition but then had to stop working. You don’t have to have all the medical answers for this, but you do need to be prepared with an answer.
3. It’s always better to have too many records than too few, but make sure they are well-organized and easy for a judge to look through.
4. There is a trend that began in 2017 of judges relying more on medical records than personal testimony:
 - Objective evidence such as MRI’s and blood tests are especially helpful, although for migraine these are not relevant.
 - It’s not good to have a gap of 6 months or more in medical treatment.
 - If you don’t have medical records then you are unlikely to win your case.
 - It is essential to make a list of every doctor you have seen over the past 10 years.
5. Any medical records and lists of doctors/medications has to be complete at least FIVE days before your hearing. After that deadline, the judge does not have to accept new medical records or other evidence into your case. Note: they may be lenient and allow it, but it is not required.
6. Encourage your doctors to cooperate and make sure that you get vocational limitations forms completed by two doctors, as well as a Q&A letter from your neurologist.
7. Expect the judge to ask if you are complying with all your doctors’ requests (other than surgery when you are afraid of an adverse result). These are things like tests, medications, physical therapy, lifestyle changes. If you are refusing to take a recommended treatment for a good reason, then be prepared to explain why you aren’t complying.

ADVANTAGE OF BEING OVER 50

This is a magic age in the disability world because then you have a distinct advantage in pursuing disability. After 50 it is more difficult to get back into the workforce and harder to recover from issues you may have. The “grid rules” are very important here; they say that if you are 50 or over, you have unskilled job experience, and little to no training, you are much more likely to be approved. Once you hit the age of 55 then this is even more relevant.

VOCATIONAL WITNESS AT A DISABILITY HEARING

At most SSA hearings there will be an independent vocational witness (VW) present either in person or by teleconference. This is a person with experience and knowledge about jobs in the economy. They will give evidence about jobs you may be able to do given your limitations.

1. The judge will give the limitations to the VW and then ask if there are any jobs suitable.
2. Ideally, you want the VW to testify that there are no jobs available that you could do given your limitations.
3. The judge is likely to present the VW with a possible scenario and limitations; you may disagree with those limitations, but the scenario is one that they determine from your case. If the VW comes up with a number of jobs that are possible, then the judge may ask further questions to clarify, including giving a different scenario.

THE INDEPENDENT MEDICAL EXAMINATION

It is unfortunate that the Independent Medical Examination (IME) requested by the SSA is often the reason for a denial before you get to the hearing stage. The exception to that are psychological evaluations which are sometimes helpful for your case. What are your options if you do not have a helpful IME or the experience is negative? You can't refuse to go to the evaluation, however, immediately afterwards write down everything you can remember about what happened. Examples may be:

- “The doctor didn't touch me at all.”
- “The doctor only spent five minutes with me.”
- “The doctor didn't ask me any questions.”

If you have hundreds of pages of medical records showing there is something wrong, as well as detailed information on what happened (or didn't happen) at your IME, then it is easier to have the IME record dismissed. At the hearing you or your attorney can object to the weight that the judge should be giving this IME based on lack of time spent, lack of contact and examination, lack of questions, etc.

INFORMATION ABOUT YOUR JUDGE

If you have got as far as the hearing level in your disability case, then once the date for that hearing is set you will get a letter giving the judge's name. You can look up your judge's record of approving cases so that you have a basic idea of what to expect. You can find this here: www.disabilityjudges.com. If your judge has a higher than normal average than other judges then that is always encouraging. In general, a 45-55% approval rate is good; 17-20% approval rate is bad! At your actual hearing, if the VW says there are no jobs you can perform, then that is a good sign. On rare occasion the judge will give his determination at the hearing, but it is more normal for the determination to be made afterwards. Once the determination has been made it has to be written up and submitted to the SSA before you will get the decision by mail, and this process can take several weeks.

LAST MINUTE ADVICE BEFORE YOUR HEARING

1. Meet your attorney (if you have one) a couple of weeks before the case to practice questions. Also meet with them 30 minutes before the hearing.
2. When you answer questions at the hearing be very specific; practice not saying generalities.
3. Answer verbally with yes or no, not shaking or nodding your head. You will be recorded.

4. Remember, at a hearing it is about your capacity to function at a job not about your illness itself. How your diagnosis impacts you is the most important thing.
5. Dress in business casual or neat casual; nothing too formal and nothing too casual. Nice pants or skirt and neat shirt. **Men:** don't wear a suit! **Women:** this is not the day to wear a lot of makeup in order to hide how sick you feel!
6. Address the judge as "Your Honor" and lean towards formality in all your responses.
7. If you are uncomfortable or in pain and need to stand up during the hearing, you don't need to ask permission, but make sure you stay near the microphone. Remember, if you are claiming that you can't sit for more than 20 minutes but then sit through an hour hearing that will impact your credibility.
8. It's ok to have notes with you, especially for dates, medications, migraine calendar, etc.
9. When the VW speaks they are not talking to you. Don't talk to the VW; allow your attorney or judge to do this.
10. Don't feel like you have to testify that you are limited to your bed or chair every day.
11. Don't have an entitlement attitude or state that you hate the idea of being disability and only there because you have to.
12. If you have nerve pain then be prepared to describe it to the judge. If you have a negative EMG test then explain why and the possibility of the small nerves not showing up on that. Describe how frequently (e.g. 3-4 times per week) you get the nerve pain as well as the level. Don't say you have 8 or 9 level of pain 7 days a week because that isn't credible. For example, you could say that your nerve pain is generally at a 2 or 3 but with any activity it quickly jumps up to a 7-8, especially when trying to use your hands. Explain how the pain changes as well as what it feels like (e.g. burning, numbness, pins and needles, shooting, stabbing).
13. Spinal stenosis is commonly talked about in medical records. This is a sign that something fairly serious is going on. The spinal cord is being compressed and nerve conduction interfered with: pain, limitation of movement, sciatica, cervical radiculopathy, etc. If this is severe it limits your capacity to stand, walk, lift and sit, and as such it limits your capacity to work in either physical or non-physical jobs. Spinal stenosis is something organically wrong and is objective rather than subjective. This can be very convincing to a judge, especially if it is listed as severe stenosis, because of the implications and likely symptoms.

DISABILITY ONSET DATE AND BACK-BENEFITS AFTER APPROVAL

- **Back Benefits:** Payment of "back benefits" often happens because of the huge delays in approving disability benefits. Frequently attorneys will determine whether or not to accept your case based on the amount of back benefits reasonably expected since they work on contingency.
- **Disability Onset Date:** There are some rules about this, but you can often go BACK one year from the date you had to stop working, or the date you actually filed your SSA claim.
- **Five Month Waiting Period:** The first five full months that you are officially considered disabled you will not receive benefits. Sometimes, having a previous incomplete application may help with this. Not being able to work for a year before you applied can also help if you have the specific date for this.
- **Medicare Eligibility:** There is a 24-month waiting period from the official disability onset date to when you are eligible for Medicare.
- **Attorney Fees:** If you retained a disability attorney then the contingency fee they can charge is 25% of your backpay benefits or \$6,000, whichever is LESS. This amount will be automatically taken out of your backpay and sent to your attorney before the balance is sent to you.
- **Monthly Benefits:** Once you have received any back benefits you can set up your ongoing payments to be received via direct deposit into your bank account.
- **Filing Your Taxes:** Make sure you consult with an accountant when it comes to filing your taxes the first year after receiving any back benefits. You should receive a tax document from the SSA outlining the breakdown of back benefits for each year.

AUXILIARY BENEFITS

Any of your children who were under 18 (or 19 and still attending high school) should be eligible to receive what is called “Auxiliary Benefits.” The SSA awards up to 50% of your back benefits AND the monthly benefit amount to each child with a maximum family benefit of 150%. The 150% limit is relevant regardless of the number of children and is divided equally. For example, if you are awarded \$10,000 in back benefits and \$1,000 monthly, and you have two minors, each of those minors can be awarded a maximum amount of \$2,500 back benefits and \$250 monthly benefits. Auxiliary benefits are allowed for your legal children (either physical or adopted), as well as step-children who you and your spouse support and are declared as dependents on your IRS tax return. Auxiliary benefits do NOT impact the amount you receive as the original claimant.

After approval, ensure that your local SSA office has the birth certificates for each of your children/step-children, as well as their social security numbers. You may need to make an appointment to take this information in, as well as to sign necessary paperwork to be a “representative payee.” The SSDI backpay benefits for any minor children will be sent to you and have to be put into a bank account with both their name and your name on it. You will be the “Representative Payee” for your child’s auxiliary benefits. Ongoing auxiliary benefits for minors will also be sent to you but can be put in a general account not necessarily in the child’s name. Bear in mind that you need to document everything you spend the funds on including having receipts. There are specific things auxiliary benefits can be spent on including living expenses and education.

Because disability cases can take many years to be approved, it is possible for your minor children to turn 18 before the benefits are disbursed after approval. If you have children and they are 18 or over at the point where you are approved for disability, any applicable back benefits will be sent directly to them from the SSA.

WHAT HAPPENS NEXT?

If the hearing went well, what happens next? The hearing office can take from 4-6 weeks to get a written decision to you. However, it can also take less time or up to 3 months. You can check your case on your Social Security Portal online, however you will not be able to see the actual decision, only whether or not a decision has been made yet. After a favorable decision, either full (this means your claim is approved in full with the dates you gave) or partial (this means your claim has been approved but with an edit such as a later onset date), then the claim has to be processed for payment. This processing happens with your local social security office and it can take anywhere from 30-90 days before the first check arrives. If you have minors, or your children were minors at your disability onset date, then make sure you take their birth certificates and social security numbers into your local social security office so that they are added onto your case. Also, if you received state disability payments since your onset date, you will need to provide evidence of how much you were paid and for what dates – there may be an offset from your SSDI benefits if you received state disability and it’s important that the processing is not delayed because your local office doesn’t have the correct paperwork.

ADDITIONAL INFORMATION AVAILABLE

For additional downloadable resources on helping with a disability claim for migraine, please visit our website at: www.MigraineMeanderings.com/Disability

- Sample Letter Requesting Medical Records for FREE
- Disability Diary (Excel template)
- Vocational Limits Form for Your Doctor(s)
- Request for Neurologist for Q&A Report
- Neurologist Sample Q&A Report
- Pre-Hearing Questions for Claimant
- Pre-Hearing Questions for Witness
- American Migraine Foundation Guide on Disability