



Attorney Kornfeld's Social Security Disability Newsletter

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DID YOU KNOW?

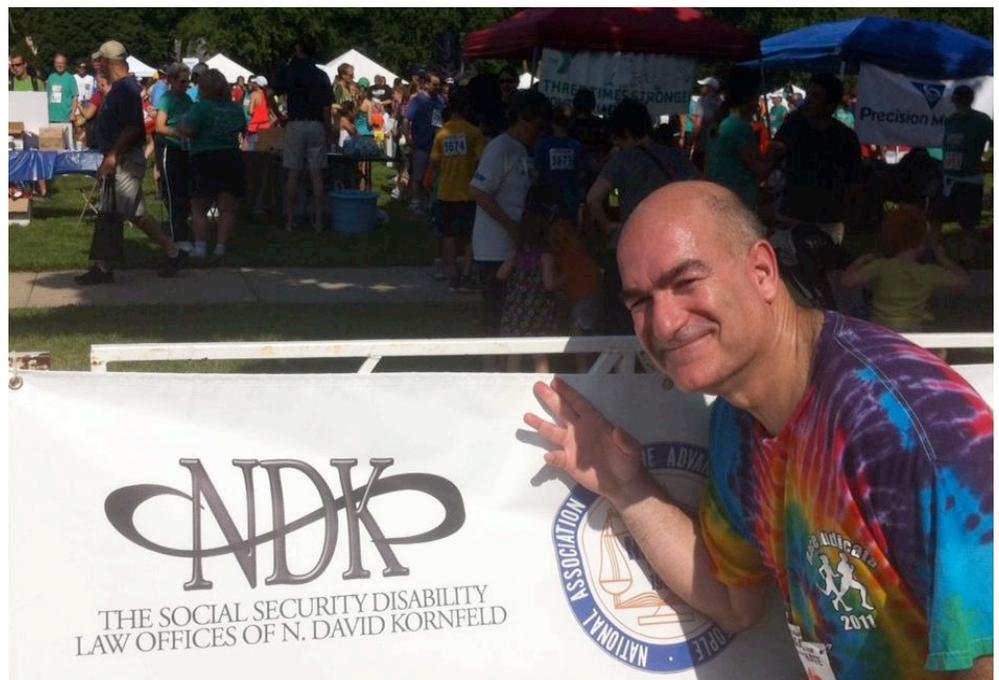
In 2011 the SSA adopted a "Judge Anonymous" policy, which denied claimants and attorneys the right to know the identity of the judge prior to the hearing. While acting as Chairman of the Social Security Law Committee of the Chicago Bar Association, Attorney Kornfeld fought to repeal this policy. Earlier this year, the new Commissioner ultimately rescinded this unreasonable and impractical policy. Claimants once again know the identity of their judge before the hearing.

A Social Security Backlog Crisis... or Another Form of Crisis?

In response to articles in a past edition of the American Bar Association's *Administrative & Regulatory Law News*, Attorney Kornfeld wrote a reaction letter to be published in the Summer 2013 edition of the publication. This newsletter includes a selected excerpt from Mr. Kornfeld's letter to the editors (continued on page 3).

Race Against Hate 5K

Attorney Kornfeld continues to be an active sponsor of the Ricky Byrdsong Race Against Hate. Over the last decade and a half, the Ricky Byrdsong Memorial Race Against Hate has honored Northwestern Basketball Coach Ricky Byrdsong, who suffered a tragic murder at the hands of a racist anti-semitic in July 1999. Proceeds from the Race benefit the work of the YWCA Evanston/North Shore, especially those areas of racial equity. Mr. Kornfeld expects that his office will continue to sponsor this 5K running event for years to come.



Attorney Kornfeld at the 2013 Race Against Hate

SSA Issues Ruling Regarding Drug Addiction and Alcoholism

Social Security Ruling (SSR) 13-2p - Evaluating Cases Involving Drug Addiction and Alcoholism (DAA) - was issued on February 20, 2013 and is currently in effect. Since a change in the law beginning in 1996, if DAA is considered a contributing factor material to a determination of disability pursuant to an Act of Congress, a claimant will not be able to receive benefits. Although SSA previously had policy instructions to guide decision makers, SSA had not provided clear guidance on the evaluation of DAA claims. Then new SSR clarified that it is the claimant's burden to prove that DAA is not material to a finding of disability. The SSR spells out a six step "DAA evaluation process" with detailed explanations of each step. In essence, if the claimant is found disabled considering all his or her impairments including DAA, the sequential evaluation is applied a second time to determine if the claimant would still be disabled if not abusing drugs or alcohol. The ruling states that: "We will find that DAA is not material to the determination of disability and allow the claim if the record is fully developed and the evidence does not establish that the claimant's co-occurring mental disorder(s) would improve to the point of nondisability in the absence of DAA." It is unclear, however, what evidence is needed to show non-materiality. Periods of abstinence are certainly relevant; but it is unclear how long and how many periods of abstinence are necessary to demonstrate that DAA is material. The ruling does note that if a claimant is abstinent at least twelve months but remains disabled, DAA will not be material even if the other impairment is gradually improving. Decision-makers should only consider those periods of abstinence that are "long enough to allow the acute effects of drug or alcohol use to abate." The ruling also notes that improvement of a psychiatric impairment while the claimant is in a highly structured treatment setting might not be sufficient to establish that DAA is material. Rather, evidence from outside the highly structured treatment setting to show materiality would be necessary. Also, the ruling states that "[w]e may find that DAA is not material depending on the extent to which the treatment for the co-occurring mental disorder improves the claimant's signs and symptoms. If the evidence in the case record does not demonstrate the separate effects of the treatment for DAA and for the co-occurring mental disorder(s), we will find that DAA is not material..." An opinion from an acceptable medical source such as a doctor can provide an opinion whether a claimant's physical impairment would still be severely limiting in the absence of DAA, even if the claimant does not have a period of abstinence. It is uncertain how this SSR will be interpreted by Social Security Judges and Adjudicators, but the bottom line is that individuals who continue to suffer from DAA will be confronted with significant obstacles in their efforts to obtain disability benefits from the Social Security Administration.

A Social Security Backlog Crisis.. or Another Form of Crisis? (Continued)

Mr. Kornfeld wrote, "In this era of sequester, fiscal cliff, the budget crisis, the 47 percent, the transformation of the word entitlement into a dirty word, the individual filing for disability is up against a lot. Recent statistics show that denials of claims have increased at all levels of the adjudicatory process including at the hearing level. The recent March 2013 draft report of the Administrative Conference of the United States, which had been commissioned and funded by the Social Security Administration, documents an Administrative Law Judge allowance rate of 61 percent in fiscal year 2009, reduced to 41 percent in fiscal year 2012. As of the first quarter of 2013, judges' allowances remained similarly depressed at 43 percent. The law has not changed in the interim. The standards for disability have not changed. What has changed is the subtle pressure on judges given the fiscal crisis in this charged political climate to simply deny more claims. Given the 800,000 claims adjudicated by ALJs on an annual basis, comparing the 2009 allowance rate to the 2012-2013 rate, approximately 150,000 more unfavorable decisions were issued in 2012 and another 150,000 are going to be denied this year representing significant increases over what would have been denied in 2009. What does this mean? What this means is that every working day across America 580 people are receiving ALJ denials of benefits where just four years ago in 2009, they were being approved. Every day – 580 individuals, 580 families, 580 stories of devastation. Now that is a real crisis." For a complete copy of the letter contact Attorney Kornfeld at his Evanston office.

Online Social Security Additions

The SSA has recently issued statements announcing the newest additions to the Social Security website, www.ssa.gov. If you wish to visit the agency's website via any smartphone, you will be redirected to the agency's mobile-friendly website, where you can readily access several documents and read publications.

In addition to accessing documents, you will be able to create a "*My Social Security*" account, a personalized online account you can utilize beginning as young as 18 and continuing throughout the time you receive benefits.

The "*My Social Security*" account allows benefit recipients to access various documents instantly. You could also change your address or change direct deposit information online. With this new service, you can request benefit verification letters and conduct other business with Social Security at the comfort of your home. To sign up for an account, visit:

www.socialsecurity.gov/myaccount.

If you don't have a computer at home, you can use one at your local public library.

About Our Office...

Attorney Kornfeld opened his law office in January of 1983, over 30 years ago. A graduate with high honors from the University of Illinois, he earned his law degree from the Boston University School of Law in 1981. He has concentrated his practice in Social Security Disability law and over the years has successfully represented over a thousand disabled claimants in their effort to obtain much needed disability benefits before the Social Security Administration. His main office is located in Evanston although he sees many clients at his downtown Chicago location as well. He has also represented individuals in Federal District Court, as well as in the Seventh Circuit Court of Appeals. From 2011 to 2012, Attorney Kornfeld served as the Chairman of the Chicago Bar Association Social Security Law Committee. Attorney Kornfeld is a long-standing sustaining member of the National Organization of Social Security Claimants' Representatives as well as a member of several Chicago-area Bar Associations.

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“Every government degenerates when trusted to the rulers of the people alone. The people themselves are its only safe depositories. The care of human life and happiness, and not their destruction, is the first and only object of good government.” – Thomas Jefferson

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