

**Brian Therrien:** Good day everybody this is Brian Therrien, it's my pleasure to have with me today, Jonathan Ginsberg. Jonathan, how are you today?

**Jonathan Ginsberg:** I'm doing fine Brian. Nice to be here.

**Brian Therrien:** Great. Well, thanks for joining us. It truly is a pleasure. We've watched your work with Social Security and Social Security Disability for a while and our audience has a lot of questions and it's nice of you to spend some time with us to address those. So, what I want to just let the audience know is that, month in and month out for quite some time now, is you have helped people down in the Atlanta area get Social Security Disability benefits in a very timely manner and in a lot of cases, without having to use a lawyer. Which is like the secret, right?

**Jonathan Ginsberg:** Absolutely.

**Brian Therrien:** We're anxious to learn from your perspective, all about this topic and how our audience can go through and pursue benefits and get them without spending a lot of money. Get them in a timely manner, so the things we are anxious to talk about is start from the beginning. How do you file? Who qualifies? What do you do to get started? What is the criteria, etc, etc. So just for everybody that's listening out there and myself, I'd be anxious to learn a little bit more about your background. You've been doing some great stuff. How long you been doing it? Tell us a little bit about your practice.

**Jonathan Ginsberg:** Well, I've been practicing law down here in Atlanta for about twenty years and about half that time I've been doing Social Security Disability, representing claimants, people who are disabled and are trying to get approved for Disability benefits. Really since the time I have been in Social Security I've been doing a lot of writing about it, writing on blogs and on websites and articles and things like that. It's really a very interesting practice. It's kind of interesting to watch how it's evolved over the past ten-fifteen years. It's really a lot different then it once was. Primarily because the numbers have increased so dramatically, the people that are applying numbers have gotten quite large.

**Brian Therrien:** Interesting. Just our aging society perhaps has something to do with that.

**Jonathan Ginsberg:** I think that it's partially the aging society. I think that there's a lot of medical conditions and maybe we will touch on some of this, like fibro myalgia, which is a real big one. We have a lot of them that are relatively recent in a sense of being diagnosed more frequently./ I think as medical technologies improve with the diagnosis become a little bit more standard and Social Security recognises some of these things may be things that were keeping people from working before. Nobody really knew what the problems were before but now we kind of know what they are and Social Security recognizes that. I think, there's more information out there in the public thanks to the internet about Social Security and the various programs, so that people that really

can't work, know that there is some way that they can get some relief and some cash and money to live on with dignity. That's really what I tell people, is that Social Security Disability is not going to solve all your problems it will give you some money to live with a little bit of dignity and to me that is probably the biggest dividend of this whole process is people don't have to worry about how they are going to pay their rent or how they are going to eat because they have a little bit of money coming in from disability.

**Brian Therrien:** Takes care of the basics. So in your work in representing those looking for Social Security benefits, where do you do your work? Is it geographically tied or all over the place?

**Jonathan Ginsberg:** Well, it can be all over the place, I mean, most of time I have been mostly limited to Georgia, because I live here and its just easier for me to get to various places. But I've gone to Atlanta and Savannah which is four or five hours away. I've gone to Birmingham. I've gone as far as Buffalo, New York. I do travel sometimes, but I'm pretty busy with the Atlanta cases, so that kind of keeps me busy. One interesting development that is happening more recently is that the Atlanta office is so far behind and is so backed up. It literally is two years from the time a case reaches the office to the time that they schedule a hearing, that they've been bringing in judges from all over the country. So I've had an opportunity in the last six-eight months to try cases before judges out of Virginia, West Virginia, California and Pennsylvania. So even though I'm not travelling to those places, I'm getting a chance to see the judges, how they approach the cases either differently or not. That's one of the trends with Social Security right now is they are moving toward video hearings. So a lot of the people that apply, especially if they live in a small state and in a place that is not real populated, they may get a hearing done probably with a television, with a judge in a remote location. That presents different challenges, but that's what's kind of going on. So, to answer your question, I do most of my physical appearances in Georgia and the Southeast, although, with the onset of the video hearings, I suspect that I might be doing more hearings for claimants in various stats and appearing by video.

**Brian Therrien:** Wow. Technology is certainly getting in the game. Sounds like they are scrambling to keep up.

**Jonathan Ginsberg:** They are and you know, I think, that video hearings, there is a place for them and certainly video hearings are preferable to waiting two years to get in front of a live judge. I would say that video hearings, you do lose a little bit of the connection that you might otherwise make with the judge. So everything else can equal an impression hearing is probably preferable. But as I said, if it's a choice of waiting two or three years to get in front of a judge or getting in front of a judge in six or eight months and doing it in front of video, the video is probably a good thing to do. I think it is also going to require the judges at various hearing offices to retrain themselves to not necessarily be so concerned about what a sense of what a claim is about, because there is nothing that really can beat the one to one relationship. I think what it also does is it makes the attorney's job or the claimants job if they are pursuing it without an attorney, that much more focused on providing the right medical documentation, the right reports,

filling out the forms correctly, because again, you lose that face to face with a video hearing that you have to make up in other ways and again, Social Security is really a lot about speaking the language that Social Security uses and you have got to know how to do that to win.

**Brian Therrien:** Okay, we've got to learn all about that today while we have you here, but speaking of being in front of attorneys, you've obviously had some experience over the years. Any idea how many times you've had to go out and represent clients.

**Jonathan Ginsberg:** I've probably tried well over a thousand cases. I don't keep track of actual numbers, because I'm too busy preparing new cases and working doing various other things. But I would say easily over a thousand people that I have represented in hearings and also through my blogs and websites and emails and so forth. I certainly have talked to a lot of them as well. So I would say that the number of people that I've talked to is probably close to a couple of thousand. The ones that I have actually represented are over a thousand.

**Brian Therrien:** We are going to talk about this a little more later, but I do understand that at some point in your career, I'm not exactly sure where it was, that you got a critical piece of advice from a judge that actually pulled you aside, gave you this piece of information and since then, your success rate has been fantastic.

**Jonathan Ginsberg:** Absolutely, and I remember it like it was yesterday. I'd really only been practicing in this area for just a few months and I was really focused on the medical issues, because again, Social Security looks at it on the surface it's about somebody's medical problems and the problem of course is that Social Security doesn't really focus, even though Social Security is medical based, the issue in every single case is really about work capacity.

**Brian Therrien:** So when you say medical, like how bad somebody is hurt or hurting. Right?

**Jonathan Ginsberg:** Right, here's the best way to look at it. You could have three herniated discs and you could have chronic obstructed pulmonary disease and you could have a bad liver, you could have all kinds of things, a bad heart, but if you can still work, you are not disabled.

**Brian Therrien:** Ohhh.

**Jonathan Ginsberg:** Whereas a person could have a bad, really painful knee that failed surgery and a knee that causes excruciating pain and limitation of motion. That person might be disabled because of the pain. So really, not so much the specific diagnosis, which is important but not critical. The important thing is how this all affects the claimant's capacity to work. What this judge did, he has since retired, but I run into him every once and a while, he pulled me aside and he said. You know I like the way that you prepare your cases, you're always prepared. You know your file but I think you

are focusing on the wrong thing. Your focusing on the medical, whereas you really need to be focused on your clients capacity for work. It all kind of clicked at that point. I just sort of looked at him and I said, you know, I never really thought of it in that way, but that's really what this is all about. It's not at all intuitive, because again you look at the Social Security materials and you see the pages of listings where they talk about medical diagnosis and ultimately this is really about functional capacity for work. If you see it that way, everything that you do with Social Security; every form you fill out, every statement you make to them needs to be focused on how this impacts you ability to work because the definition of disability by Social Security standards is; are you able to engage in what is called substantial gainful activity or work. And if you can't, you are disabled and if you can perform substantial gainful activity then you are not disabled. So you've got to focus on the work capacity.

**Brian Therrien:** So, our natural tendency, or mine as I think through this process, if unfortunately something was to happen to me like this, is that, I'm hurt. I feel bad. I'm not able to work. I would think that that is how most look at it. But the system does not look at it that way. They say, yeah you're hurt. Yeah, you have some pain, but you can still work. That's what needs to be proved. Correct?

**Jonathan Ginsberg:** Exactly and in fact if you think about it. Take it a step further. Most lawyers who have done any kind of injury work, the personal injury or car accidents or Worker's Comp, they are focused on medical problems because that is really what you've got to look at. Social Security is a different animal. It's really about work capacity and, you know, especially most cases don't really involve one particular medical problem, they may involve numerous problems. You may have an element of depression for example. In a lot of cases, in addition to that bad knee or in addition to that breathing condition or cardiac problem. So it's a combination of things. It's not one thing in particular, maybe four of five things but you add them together and the one problems maybe limits the person from performing in hot weather or in a dusty environment. The knee problems might eliminate jobs requiring jobs with walking. The depression might eliminate jobs that require interaction with co workers or supervisors and so you add all these things together and the end result is a capacity for work that is so reduced by these various ailments that this individual is not able to perform competitive work in any type of job at all that exists in the National economy. That's the way that Social Security looks at it.

**Brian Therrien:** Fantastic. We are going to zero in on that more, but let's start at the top with this for people. I think what I would like to learn from you is what are the top challenges that are facing people as they are going through the process? I ask that question because if there is a listener that is brand new and thinking about this, of course, they want to avoid the mistake that causes the challenges and the problems. For those who are in the process and wondering why they've been denied and they are not getting benefits, they want to correct these. Tell us if you would Jonathan, what are the challenges that are out there?

**Jonathan Ginsberg:** I think there are probably three main things that I can point to. The first one which is the big one, is not being able to get regular medical treatment. Social Security really looks at a lot of medical records and a consistent treatment record. And again, ultimately where you're headed with that is you want the doctor to translate those medical problems into very specific work limitations. But you have to have a doctor to support you. Given that this process is now taking sometimes one and a half to three years, claimants have got to have a regular ongoing source of medical treatments. So they have a doctor that can comment on their functional capacities. So getting regular treatment is a big, big problem.

**Brian Therrien:** I'm sorry I just want to pause you right there, hold your thought this is great. You said, one to three years. Are you saying it takes one to three years to complete this process.

**Jonathan Ginsberg:** It can actually take longer than that. I'm saying that it takes from the time that you apply to the time that you actually get your hearing decision is not uncommon to be three to four years.

**Brian Therrien:** Wow.

**Jonathan Ginsberg:** It is really out of control at this point. Which is what is leading Social Security to attempt to reengineer the process and this is also what is behind all these video hearings is to try to move things and to get Atlanta and some of the other states the actual awaiting time from the actual time that you request a hearing, which again may be a year into the process.

**Brian Therrien:** Mmhmm

**Jonathan Ginsberg:** So you are already at twelve months. It may take another twenty four to twenty eight months to actually get to a hearing. So we may be looking at three years before you get to a hearing and then the judges have to issue a decision and that could take another six to eight months. I've literally within the last month tried cases for people who applied in 2001 and 2002 and they've just waited. And again, it's inexcusable in my opinion, but people who are disabled and probably not able to work. What are they supposed to do? This is a question that I get, and a lot of other attorneys get. How do I eat? Where do I live? Who's supposed to pay the bills?

**Brian Therrien:** Yep.

**Jonathan Ginsberg:** I wish I had an answer for them. It's a terrible, terrible situation. Social Security to its credit is trying to address it. But so far with no success.

**Brian Therrien:** Yeah, even if they cut it in half it's still too long. So let's back up. The medical treatment; that's the first key. You need to have consistent medical treatment.

**Jonathan Ginsberg:** Right.

**Brian Therrien:** Let's move on this is great information. What were the next....

**Jonathan Ginsberg:** One more comment about that. When I say regular treatment, I don't necessarily mean they have to go every two weeks. It could be once every three months, once every four months. It just has to be some sort of an ongoing relationship with a doctor so that they doctor can be a treating physician. Social Security again classifies everything and a physician or doctor who has treated you ongoing is the treating physician and that doctors opinion is given more weight that someone that may have seen you once or twice. So even if you are seen once a year or once every six months, that can be considered regular treatment. So I tell my clients, you really have got to figure out a way to get to the doctor, I even if it means going to friends and relatives and borrowing the money, its worth doing that. Because Social Security will give a lot more credit to a doctor that you see every three or four months then one you've only seen once or twice over that three or four year period.

**Brian Therrien:** So regular could also be termed as consistent treatment.

**Jonathan Ginsberg:** I think that is a good way to put it, absolutely.

**Brian Therrien:** Yeah, okay. Good tip.

**Jonathan Ginsberg:** The second thing you're asking me is what's the second big issue that is facing people. I think that the delays in part of it that we just talked about. But obviously the delays When you are looking at a three to four year process. How do you eat? What are you supposed to do during that time and these delays cause a lot of hardship on people and again part of what lead me to write my book was how do you get approved early. So I am trying in my own way to help with the delays but that is a big problems that Social Security recognizes that. If anybody is going through the process recognizes the delays are a real big, big problem.

**Brian Therrien:** Okay. So consistent treatment would help that out?

**Jonathan Ginsberg:** Absolutely. The third thing I think is really key to understanding Social Security and part of what its problem is. You have got to talk their language. Social Security has its own vocabulary. It's own way of approaching things and again, we'll touch on those a little bit before about the work capacity focus. So you have got to learn to speak their language, either you or your attorney has got to know what they are looking for. Because again, whether it's a judge or the adjudicator, or the person at the administrative earlier level. They are looking for very specific things and if you know what they are looking for you can create a theory of your case. You can create an approach that will give them what they want. That is crucial and a lot of people that go into this process, who do it on their own and don't have good representation, they don't know how to speak the language. And again, even as an attorney who has spent a lot of work in other areas involving injuries if that attorney may be a good attorney in

terms of litigating car accidents but may not understand that this is about work capacity and will completely miss the boat. Somebody that is not represented at all is not going to know what they need to focus on and they may end up wasting a lot of time and effort and not getting to what the judge or the adjudicator wants. Speaking the language is key.

**Brian Therrien:** So we need to spend some time learning how to speak the language.

**Jonathan Ginsberg:** Absolutely.

**Brian Therrien:** Now, back on the medical treatment side. We get a lot of questions about, my medical records weren't the right medical records. They have problems finding my medical records. So, there seems to be some type of, maybe there is a tie in between the medical treatment and the records are part of this equation. Could you speak to that for us?

**Jonathan Ginsberg:** Well certainly, again you can have medical treatment but you've got to have those medical records and what I tell my clients is that they should keep their own file, first of all. So whenever they go to the doctor they should ask the doctor for copies of whatever they can MRI reports, or X-Ray reports or even more than that, they should ask the doctor periodically, like every six months or once a year for copies of their file. Because it is not specially in this day and age, medical practices are bought and sold, files are stored or lost and some of these are medical records from a hospital going back five or six years would be very hard to get. In addition, public hospitals are frequently understaffed and it can become a real problem to get these records. In Georgia, we have an interesting situation because we get the records without cost for a disability application, a lot of states don't have that. I know that a lot of places the actual patient can get the records without a lot of cost. But I think it is important to make an ongoing list, people should do it any really, make an ongoing list of everyplace you've been treated at so that you can help Social Security by providing a consistent and through record. I can't tell you how many times I've had cases where we had to amend the onset date, change forward the date the person was approved for benefits because we didn't have records that were going back far enough.

**Brian Therrien:** I've had people complain to us that their records have been lost. So if their records are lost and there is no copy of them. Wow. I mean, what an issue.

**Jonathan Ginsberg:** Your out of luck. The thing about Social Security which is kind of nice is this has been a fairly informal process, these records don't need to be certified like they would in civil court. So photo copies are fine, as compared to State or Federal court where you have to have. You have to introduce them as evidence, they have got to be certified. They have got to be notarized by a medical custodian. Social Security just takes photocopies of records. So the best clients that I've got are the ones that come in and they have this big stack of records and we've got a lot of the work done. We can go ahead and submit and Social Security will accept. Of course the claimants are involved in this long before they have an attorney or even before they understand that they have a Social Security case, but anybody who is even thinking about a disability

might be something in their future. Its very important to number one keep a current list of the names, addresses phone numbers and fax numbers for the physicians that they've seen. But also, to keep a medical file, because if you don't do it, like we said, there's a good change, not a good chance but a possibility that if that files gets lost or misplaced then you're out of luck.

**Brian Therrien:** This really needs to be treated like a business. You need to keep your files, you need to stay on top of them. You need to make regular appointments from the medical side and you need to periodically get your files.

**Jonathan Ginsberg:** Right and also something else is that Social Security has been known to lose files so again, keep a copy of everything that you send them. We are at the point now where everything we send Social Security, we spend extra money to send it registered mail, return receipt requested, because if you don't and they lose the file then you can go into limbo for years and years and years. I had a case that I won about three or four months ago, that, this thing dated back seven or eight years. They had lost the file and we had a copy of it and we sent it to them. They lost that. Finally after two hearings and three or four reconstruction of the file we finally got it to the judge and he approved it, I think more because he just felt so bad because the guy had been waiting for so long that he approved it. Yeah, they will lose files. Again, I am not saying that this happens all the time, but you've got to be very, very alert to that sort of thing and we talked about this as well, but you have to keep track of when you sent things in so that you know when things are supposed to come back.

**Brian Therrien:** Yeah.

**Jonathan Ginsberg:** They are dealing with just a flood of paperwork. They are trying to move from a paper system to an electronic system and things will and do get lost on a regular basis.

**Brian Therrien:** The stakes are high, its worth it. Okay. The people that are working with or coaching or guiding through disability that we talked about briefly in the beginning. That they are successfully getting benefits without a lawyer and in a timely fashion. You have mentioned a book, I call it like a how to guide because it's beyond a book. I've seen it it's big and easy to read and all that. Now this guide that you have prepared, you don't have to tell us everything, but can you give us a sneak preview of what it is and why it's working and successful and how did you come up with it?

**Jonathan Ginsberg:** Well, I give a lot of credit to this to my clients because doing this day to day, I deal with the forms that Social Security has and it's just sort of a second nature thing. You fill the forms out, you send them in. But I had one client in particular, that came in and said you know trying to fill out these forms is real burdensome because if you are depressed or if you are in a lot of pain its very, very difficult to fill out a bunch of forms. Especially these government forms. These forms I think I counted over ninety-nine or maybe over a hundred at this point. Pages of forms and these are government forms and they are put together over time so they keep getting redone and there is never

really completely redone they just keep adding things to them. So it's like going back to school. Again, imagine yourself being disabled and uncomfortable and you have got to fill out these forms and there is no instructions to speak of. There is no real guide to know what they are looking for but there are all these questions. A lot of times, the questions will look like they say the same thing and people are supposed to be filling these things out. A lot of times there is not enough room, for example on the forms to answer the questions. What do you do? So, I thought about it and I said, you know, this really makes sense for me to put something together for people to understand what they have got to do to fill out the forms so that they can have a reference where they can look and see how the forms should be filled out. I give examples in the book of the forms correctly filled out, so that someone could use that. Really the big picture, instead of looking at a blank piece of paper, you've got something to look at and model your answers after the ones I have on the example.

**Brian Therrien:** Okay. What I'm hearing if I get this right, is the forms that are out there to help people apply for Social Security Disability are really written and targeted towards a lawyer? Is that right?

**Jonathan Ginsberg:** Well, I don't think its so much targeted towards a lawyer, but its targeted towards the people who are making the decisions at Social Security. Realize that Social Security again has their own language. So they are looking for certain things on these forms, so question seven on a particular form, there may be a template that the adjudicator has and they are looking for certain magic words. You don't know that because nobody is telling you that. I mean, I know it because I deal with it all the time. So, really what I'm trying to say is these forms out there are not at all intuitive or easy to fill out. I'm trying to explain to people that this is how you fill them out to speak the langue that the Social Security decision makers speak. So that if they have some questions about what you do during the day. They call them activities of daily living. What they are really asking is if you were in a work environment, would you be able to perform a basic level of activity. So, they don't really care whether you vacuum, or make your bed, but what they care is if they see activities that are equivalent in some way to work activity. That will go against you. Again, perfect example, vacuuming, you know, even though you wouldn't think about it, I've had many situations where I've seen that vacuuming is an activity that for whatever reason Social Security sees it as being something that is work like in scope.

**Brian Therrien:** Mmhmm.

**Jonathan Ginsberg:** Pushing a vacuum has certain physical implications that mean that you may have certain physical capacities. So, what I would advise someone when they are talking about what they do. They may vacuum every six months, but you wouldn't want to put vacuum on there as an activity, because it's probably something that would hurt you. Whereas, making your bed or dusting occasionally is not going to be a very big deal. If you kneel to clean out the tub, that doesn't seem like a big deal but it means that you could potentially do work kneeling. So, all these questions have sort of implications and what I try to do is explain what those implications are and give

examples of how to fill the form out so you don't mislead Social Security, but also you don't tell them that you can do things that you can't do.

**Brian Therrien:** I think you just gave thousands of people a way out of vacuuming and cleaning tubs.

{laughter}

**Jonathan Ginsberg:** I think I will use it myself.

**Brian Therrien:** Speaking of the lingo, help with some of the lingo that you're using. This term adjudicator, what is this?

**Jonathan Ginsberg:** Adjudicator.

**Brian Therrien:** What's the adjudicator?

**Jonathan Ginsberg:** Well, an adjudicator is basically somebody that works for a state agency. In other words, when you apply for disability Social Security the federal agency is contracted with essentially the Medicaid office or the state offices that deal with Medicaid to do the initial adjudication or the initial decision making. So these are people that are trained to look at the forms and look for certain terms to decide whether or not somebody is disabled. Again, hardworking people, but they are overwhelmed, they are overworked and they are looking for very, very specific things. And you don't really have much interaction with this adjudicator, they are pretty much looking at the paper. Which again, makes it that much more important to have the forms filled out correctly. The adjudicator is the decision maker at the administrative level, employed by the state that you live in and they will make a decision and report back to Social Security. As opposed to a judge, an administrative law judge, who is a federal Social Security Employee and they're looking at it for much more broad sense. They are looking at the big picture of things as opposed to magic words.

**Brian Therrien:** So back to the guide that you've put together. I think I see some steps here. Let's see if I have this right. Let's put it this way.

**Jonathan Ginsberg:** All right.

**Brian Therrien:** In the guide going through the forms. The forms are out there and the people can commonly get forms from Social Security Disability and go this on their own, but what I see here.

**Jonathan Ginsberg:** Wait, let me stop you there, because yes and no. The forms that are in the book are forms that I have collected over the years and most of those forms are on the internet and available to the public.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** However, there has been a push more recently to move people toward an electronic filing system and so many of the forms are still there but are hidden and if you don't know exactly where to look for them, you can't get them, because they are trying to get folks to file these things electronically. So the forms that are in the book are actually most of the forms that are used, but the electronic forms are of course, going to be the same questions but in a little bit different format. The big problem with the electronic filing is number one, it's not completely reliable. Number two is, you sort of answer one or two questions at a time. You don't get to look at the thing as a whole. I know for me, when I'm filling out a form, I like to look at the whole thing to make sure I am not duplicating myself and I kind of know where I am headed to.

**Brian Therrien:** Sure.

**Jonathan Ginsberg:** The electronic forms don't really do that, so one of the benefits I think for my guide is sort of see the whole thing and they can see what they are looking for and they can get a sense of how to answer the question fully. So that is one good point about what the book can do. But the forms are available and some of the forms are actually not on the internet, you know, in an easily accessible location. What will happen is Social Security will send it out to the claimant during various times during the case and give you ten or fifteen days to get them filled in. So again, the advantage the book has is you have all of that stuff in front of you, so if you get these forms and you only have ten days to fill it out you have a reference place you can go look for it.

**Brian Therrien:** Yeah. Well, I know that for my own work habits that is there is something that's important that I have that I really want to sit done. I will print it off so I can have it in front of me in a physical format. So that really is what this is. You have the physical format of forms, right?

**Jonathan Ginsberg:** Basically what I did was take all the forms that I have seen at Social Security case, printed them out, answered them and then commented about why I answered and the way I answered them. So every form may have two or three sample answers based on various medical conditions and I also have commentary; this is what I did and why I did it. So that anybody filling it out can understand really the big picture, not just what is called the macro and the micro. The big picture, what you are trying to prove and examples of heres language you can actually use, you can cut and paste it and use it in your own application, your own appeals, so that you can get the best possible results. Because again, the goal here is to get people approved at the early stages before it gets to a judge. Because remember when you request a hearing, you may be looking at two or three years. The goal here is to get people approved early on. To get people approved in six months, eight months, ten months as opposed to three or four years.

**Brian Therrien:** Okay, now it's starting to come together. So all of these testimonials that people have used your guide and have had great results with it. Does it really come down to this? That the guide has everything in front of you in a paper format that is easy to use. That's not the real key to success, but the answers are filled out correctly and on

to kind of speaking the language so that when these forms go in. The first stop that they are going to make is at this adjudicator level. Is that right?

**Jonathan Ginsberg:** That's correct. I was going to say, the adjudicator realize that they are used to getting sort of this very sloppy hand written. It doesn't really say anything and all of a sudden somebody comes in with a complete package. It's filled out correctly. There's medical documents associated with it. Its just done professional. It looks completely different and it stands out. Some of the comments I get, people will say, you know the adjudicator would call me. One guy wrote and said that the adjudicator called me up and he said that this is the most comprehensive package I have ever received. I am not saying that every case is going to be like that. But when you do it correctly, it stands out so much that these adjudicators. You're making their life easy. Again, this is sort of a general rule of life if you've got to perform something for a teacher or a judge or whatever, a decision maker. You make their life easy, guess what? They are going to make your life easy. You're helping them do their job because you are actually providing them with the documentation. The form that they can use easily. They don't have to dig for it.

**Brian Therrien:** In their language too. Yes, it's really beyond a slight edge. It's a pretty significant edge. Okay, that's great to know. That explains why all these people are giving you the rave reviews that they are. Let's start with some of the nuts and bolts here. How does somebody go about really figuring out if they qualify for Social Security disability? What really is the first step to getting started into this?

**Jonathan Ginsberg:** Well, the first step is to determine whether or not they think that they meet the definition of disability. The definition of disability is basically, whether you have a medically determinable condition or conditions that prevents you from performing substantial activity that has lasted a year or is expected to last a year or result in death. So essentially you have got to have some sort of a medical problem or medically based problem, a diagnosed problem that leaves you unable to perform any kind of work. And again, not just past work, but anything at all. A simple sit down unskilled type of job that is going to last a year or longer or could result in death. So that is the standard. So question one is do you meet that? And of course the precursor to that would be are you working now? If your working, by definition, your not disabled.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** So, you've got to first show that you are not working. IN fact if you have a medical problem that leaves you unable to perform any kind of work.

**Brian Therrien:** So this means somebody's got to go and see a doctor and get a doctor's opinion on this. Is that correct?

**Jonathan Ginsberg:** Well, I don't think you necessarily have to go before you apply. But I think that at some point you are going to have a doctor support you. I mean if you go to Social Security and you say, you know, I can't work. I hurt all the time and I

don't really know why. What is the judge going to do with that? He wants to know why you can't work. What if it's something that could be fixed with, you know, a very simple procedure or just some medication. So again, it's something that is easily cured I don't know if that is going to be a disability. That's not to say that Social Security insists that you have surgery on something. But again, there are certain medical conditions, maybe it's a vitamin deficiency, could be easily fixed and you wouldn't be disabled anymore. So I think you probably need to have medical support behind you if you expect to win. There's no cost to apply though, but you can apply but think to win maybe they answer the question with a yes, you need to have medical and a doctor or a mental health professional in your corner.

**Brian Therrien:** Mmhmm. Yeah, okay. You get a good understanding from a doctor that there is something up here that might warrant or qualify you for Social Security Disability and doctors have a pretty good idea about this. Are they in tune with what the qualifications are?

**Jonathan Ginsberg:** Not necessarily. I think that doctors focus on treating people, not necessarily focused on their work capacity. I think that there are some doctors that they don't believe in disability at all. So, I think it is important for somebody who, let's see. Let me kind of restate this. You know, people don't wake up one day and say, it's usually something that happens over a period of time, unless it is a traumatic injury. It usually happens over a period of time. It's just realized at some point and time since you are missing so much work and your getting write ups at the job or your missing time from work and you can't perform or you get fired repeatedly or something like that. That would be a pretty good indication that there may be something going on here that could qualify you for disability.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** If you have a doctor who says, you know, looking at this diagnosis, you've got a heart problem that is going to continue to cause you problems. I had a case involving diabetes two days ago and the guy developed diabetes about five or six years ago and for the past five years it has not been under control. And of course, when you have an out of control diabetes, it begins to effect the various body systems, your organs, it affects you eyes and your hands and feet and so forth. And it got to the point where he just cannot function. He is so fatigued because of these problems that he can't function at all. So it's really, you've got to know your own body and you've got to have a doctor that supports you. So I think that, you know, that's the a starting point is to understand that you really can't work at all or cant do anything and have a doctor agree that. Yes, there is a problem. Now the doctors don't necessarily think about disability and sometimes what you have to do is educate them a little bit. One of the things that I tell people to do is print out a listing and the list for the purpose I will explain what that is. Social Security has published a list, if you will, of body systems that if you meet one of these listings you are disabled. There are fourteen body systems; muscular, skeletal, raspatory, digestive, skin, endocrine, etc, etc. And what I do a lot of times is I will print

out the listing and take it to the doctor and say. Does this person meet this listing? Are they disabled? So you have got to educate the doctors a little bit too.

**Brian Therrien:** That might be something that would be good for us to have on our site.

**Jonathan Ginsberg:** It is. In fact, I've got it in the guide, the CD version of it. I have a computer file of all the listings.

**Brian Therrien:** Oh, perfect.

**Jonathan Ginsberg:** If somebody wants, they can reference that. Because this is one way to link disability. There is another way called functional capacity argument. But, the first place that you look is do they meet a listing? Or at least come up with a general category. What part of the body? What part of the body systems and it may be one of five or six. Which ones are involved here. So you can start developing kind of an approach to your case. So I think step one would be to kind of understand, have a sense in your open mind that I'm not able to work because I hurt here or something is wrong here. But take that and kind of begin speaking Social Security's language by fitting what's going on in your life with their topics, their topic headings, their systems, their fourteen systems and figure out which ones are involved. So now you are starting to talk their language. So when you can approach them, you can say, you know, we are dealing here with a cardiac problem and this is listing level. This is a listing four, so you can look at number four and see which issue are involved.

**Brian Therrien:** Oh, this is great. Again, it's a couple things I've learned. One is, it's not really the condition that you have and how severe it is. It's how that condition affects your ability to work. Am I accurate in that?

**Jonathan Ginsberg:** Yes.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** Absolutely.

**Brian Therrien:** The second thing is, we're talking as one of these major steps is that if you have a medical situation is that you need to take that medical situation and have it verified by a doctor and then tie it into a listing if possible.

**Jonathan Ginsberg:** Absolutely.

**Brian Therrien:** Okay. So in that listing can then be worked on with your guide and the language can be put in the guide so that listing information goes through in a wonderful format that's going to land in front of this adjudicator and they are going to go like; wow. Right?

**Jonathan Ginsberg:** Exactly, exactly.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** Again, here's an example. The cardiac listing, you know, for heart problems talks about something called an injection fracture, which means how much blood your heart is pumping. Well, if your medical records show that your injection fraction is at whatever listing level or close to it. You could point that out on your forms, your making the adjudicator's life a lot easier. Because you are pointing them to exactly what they are looking for.

**Brian Therrien:** Why is a listing so important in this process? I mean, a listing is just these fourteen things right? Does it mean anything else? Or do you have to tie it to the records principle?

**Jonathan Ginsberg:** Right, the listing is simply the body system. Each listing may have ten or fifteen parts and listing 4.03 for example or 4.7 might be a very specific description of a heart problem. One might be a pumping problem. One might be congestive heart failure. There is different diagnosis within these listings and again it's a classification scheme. It's a way to classify what is wrong with you. When Social Security goes to adjudicate cases, they have to go through a five-step process. And again step one is, are you working. One of the steps do you meet a listing.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** So that is the first step that you have. Step three is your functional capacity. Step four, past work and step five is any work at all. So, the listing is sort of the first step that Social Security goes through to see if you meet the requirements for disability.

**Brian Therrien:** Okay, and if you do meet the listing requirements, does that give you any special treatment?

**Jonathan Ginsberg:** You're automatically approved.

**Brian Therrien:** Automatically approved?

**Jonathan Ginsberg:** Automatically if you meet a listing because each listing has built into it five functional limitations. So if you look at any of the listings, you know, it is presumed, it's an abbreviated version of the functional capacity evaluation but it's presumed that if you have congestive heart failure and your heart is only pumping ten percent of its normal volume, your disabled.

**Brian Therrien:** So what would you...

**Jonathan Ginsberg:** So if you meet a listing you are automatically approved. So the quickest, dirty way to get approved is to meet a listing. If your doctor says yes, you meet the listing then you take a print out of the listing to the doctor and you say, okay, heres the listing for and do the system. And here's the listings for skin disorders and find the one that matches what's going on with me and write a letter to Social Security saying I meet the listing and why and then you win.

**Brian Therrien:** Just like that. So that's one of your keys to success. That's why the folks that have worked with you and used the guide and met a listing are waltzing right through the system.

**Jonathan Ginsberg:** Absolutely, absolutely. A lot of times it can be as simple as pointing out in the record where you meet the listing. Now I will tell you to be fair that listings are difficult to meet. They make them hard, they don't make them easy to meet. But there are far too many cases that I get at hearing where somebody clearly meets the listing but never spelt it out clearly enough in their initial application and ended up having to wait three or four years when they should have been approved early. A couple cases that I speak about this a lot and one case in particular comes to mind. I had a lady that when we brought her to the hearing we had to bring her in on a gurney. She couldn't stand up her back was so far gone, she literally could not move, yet we had to go to a hearing. I had a case about six months ago that my client had MS so bad that she couldn't get out of her car. I actually video taped her, she came to my office for a pre-hearing conference and I had to video tape her and she was stuck in her car. We had to call the paramedics to physically remove her from her car, that's how bad off she was. Yet, why is this person going to a hearing? Because obviously at the earlier stages nobody pointed out or the doctor didn't ask the right questions that this person met a listing and there is story after story like this. But some of those ones that really jump out of me. How can a person, who can't physically move, not be disabled?

**Brian Therrien:** Hmmmm

**Jonathan Ginsberg:** Clearly they were, it just wasn't spelled out.

**Brian Therrien:** The objective number one is to try to meet that listing.

**Jonathan Ginsberg:** Absolutely and I would say that maybe ten twelve percent of the people that apply are listing level people. So most people are not going to make a listing, but those that do, should really be approved early.

**Brian Therrien:** Okay. So ten to twelve percent of those applications that are approved are listing level?

**Brian Therrien:** I don't have the specific. That is just my estimate based on what I see. Just from my side of it when I get a case, ten to twelve percent of the cases that we see we get approved early because they are listing level. Statistically it may be around there. It may be a little higher a little lower. But I would think it is probably ten, fifteen

maybe twenty percent that meet the listing. They are hard to meet, but if you can meet them, then that's the way to go. And at the very least if you don't meet the listing, it's important to at least categorize yourself. To know kind of what area you're dealing with. Again, one of the things that you don't want to do in Social Security is have this kind of undifferentiated vague complaints of pain. That's not going to do anything. You have to be able to tie it to something.

**Brian Therrien:** Okay. You mention something previously, Jonathan, that there's two ways. There's the listing process that you've clearly outlined for us and then the second one is functional capacity.

**Jonathan Ginsberg:** Functional capacity.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** Right and the technical name for it is Residual Functional Capacity, sometimes when you are looking at Social Security forms you'll see an abbreviation RFC, which stands for Residual Functional Capacity.

**Brian Therrien:** All right.

**Jonathan Ginsberg:** That is a legal term, residual means what's left over, functional means your capacity to function and capacity obviously is your ability to do things. So the issue in a functional capacity case is to what capacity do you have left over, after we take into account your medical problems and the associated complications. What you are trying to get at in those cases; is your functional capacity leaves you unable to perform any kind of work even at a sit down unskilled low stress type of environment. And that is what you are looking to show. So that your capacity is not looking at your past work. It is looking at anything at all. Actually, what happens in hearings is the judges will have vocational witnesses, people who have knowledge about a particular kind of jobs that exist in the economy and they will pose questions like. Assume I have a hypothetical person, a pretend person with the same age and work experience as our claimant here. Assume further I find that his functional capacity is limited to light work and in addition to light work he has the following impairments. The judge will go through a various list of impairments. Whether he cannot climb ladders, rope or scaffolds without a moderate level of pain. He's got a brief breathing limitation so he cannot be around duty environments. Based on that hypothetical, could this person perform his past work. And if not, could he perform any kind of work at all. My job in a functional capacity case is to argue that there is so many limitations that even if we had them all just in this hypothetical question that the vocational witness would have no choice but to say no jobs for this person to work. That is what we are really trying to do. So it's a building of limitations. Again, if the doctor is translating the medical problems into work limitations, we are taking those work limitations and adding them to a profile and the more we get the less likely there is going to be jobs that the vocationalist can find for us.

**Brian Therrien:** Okay. So throughout the guide, do you instruct people how to use the right language, to express functional or work limitations.

**Jonathan Ginsberg:** Absolutely, because again, most cases are decided that way, so a lot of the language is in there. If they are filing for an appeal, they have probably not met a listing.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** Here's a good example. When I talk to people before a hearing. I'll say, well how far can you walk? Not very far. How much can you lift? Oh, not too much> Well, that doesn't tell us anything. Right? I mean what is too far? What is not very much?

**Brian Therrien:** Oh, I see.

**Jonathan Ginsberg:** So one of the things that you want to do is talk about the specifics. I can lift no more than ten pounds frequently or occasionally and five pounds frequently. I can walk no more than thirty yards before I have to stop. That's giving a functional. That's a capacity. Fifty yards, or twenty-pounds of ten pounds, those are limitations on capacity. So if you have enough limitations, that's going to help you win your case. Again, if you don't understand this and you put on the form, I can't walk very far. What is the adjudicator going to do with that? Nothing. But if you say that you can only walk, fifteen or twenty yards. That translates into this person could not perform a job over the light exertion level. Again, I explain what those terms are as well. But there are various terms that Social Security uses so what you want to do is you want to talk about physical activities, you want to be very, very specific and talk about what you can and cannot do. Example, a gallon of milk weighs eight pounds. So if you can't lift a gallon of milk, you would put in there. I cannot lift a gallon of milk. It's very difficult even with two hands. I can maybe carry it two or three feet but then it might fall. That's basically telling them that your functional capacity to lift things is probably less than light. Which is good, that's one of the building blocks.

**Brian Therrien:** You're painting a real clear picture. That's what needs to be done. Right?

**Jonathan Ginsberg:** Right.

**Brian Therrien:** I mean you need to be specific of how far you can walk. What you can lift.

**Jonathan Ginsberg:** Absolutely. You want to know how long.

**Brian Therrien:** How long you can stay awake.

**Jonathan Ginsberg:** Absolutely. You hit the nail on the head. As many of these things that you can put numbers to, the better.

**Brian Therrien:** Mmhmm.

**Jonathan Ginsberg:** You want to be as specific as you can, so that when you answer these questions on daily living, for example. You can put in there that I have to sleep or I have to take a break for thirty minutes, every two hours. Well again, translate that into a work place. How many jobs do you know that lets you take a thirty-minute break every two hours?

**Brian Therrien:** Hmmm.

**Jonathan Ginsberg:** They don't. Any vocational witness will testify that's not going to work. No employers going to let you do that outside of a sheltered work situation. So again, you want to meet your record. You want to put those things in the record so that you are consistently saying that. If you have your doctor backing you up, then you'll have a much better chance of winning because now you are talking Social Security's language. You're instructing them and providing proof that your capacity for works has been so reduced that you could not perform any type of competitive work at all.

**Brian Therrien:** Okay. So a brief recap here in this medical area. The listing being step number one that somebody wants to go to and you clearly explained that, find the fourteen criteria, try to match it up and have it pop up in front of the adjudicator. Then the functional capacity part is paint a very clear picture of your limited ability to work is the second away to win a case. Right?

**Jonathan Ginsberg:** Well, or work like activities.

**Brian Therrien:** Work like activities.

**Jonathan Ginsberg:** Right, any type of physical activity or even for that matter, mental activity. Again, that would impact the work environment.

**Brian Therrien:** Yeah and this ties back into the whole scrubbing the bathtub and vacuuming concept.

**Jonathan Ginsberg:** Absolutely.

**Brian Therrien:** People need to be aware of. Let me jump around a little bit here. But this is a question that has been commonly asked. It's like the whole money thing that is tied into this. How much money do people get paid? How do they find out? Is it true that some people actually don't even qualify? There's no money in the system for them? Tell us how all that works...

**Jonathan Ginsberg:** Sure. Well Social Security is a part of the same system that pays retirement benefits. The big difference is that retirement Social Security looks at your lifetime earnings. Social Security disability looks at your earnings for the last ten years basically. So it is more recent history. You have got to show that you have earned enough money over the last ten years to qualify to insure you for disability benefits. Social Security has kind of an interesting formula and I will just give you a little example. For 2006, if you earn \$970, you are earning one credit. \$3880 would be four credits for the year. You need to show that you have got twenty out of forty credits available in the last ten years. So for five years you essentially earned twenty credits. Ten years would be forty credits. You have got to have twenty credits over the last ten years. That's basically how it works. You have to pay into the system of Social Security taxes, you have to build enough payments into that system that you can get something out. So if somebody comes to me and they last worked fifteen years ago. They are not going to be insured for Title II disability. They might be eligible for SSI, which is a different animal. Because disability has got to be recent and it's got to be within the last ten years basically.

**Brian Therrien:** So \$3880, you don't have to be a rock star to make that kind of money.

**Jonathan Ginsberg:** Exactly. Right. So if I have somebody that this is 2006 and somebody has been working since, lets say that they worked from 1994 to 2004 pretty consistently, they are going to be insured. Typically if you stop working, your insurability following you for the next two, three, four year as and then just as long as you can prove you became disabled prior to the date that you were last insured, you're okay. There is a form you can find out and I tell people that when they call Social Security and ask them what is might date first insured for disability and what is my date last insured. There should be some dates there that you know that you are working with. You've got to show that you became disabled during that time period. It's kind of like paying an insurance premium but of course it is Social Security taxes instead. If you are insured, and there's a form you can fill out, Form 7008, that is available at Social Securities website. It's in the book. It's pretty available. That's a good way to find out how much money you would get. Typically, a payment is going to be a percentage of what you had paid in. Typically, what I am seeing is anything from eight or nine hundred dollars a month to maybe eighteen hundred – two thousand dollars a month for a monthly benefits is kind of typical.

**Brian Therrien:** So you're saying in the guide you have a form that you can fill out and send in and find out how much money and how many credits and all that jazz?

**Jonathan Ginsberg:** That is correct.

**Brian Therrien:** Okay.

**Jonathan Ginsberg:** Form 7008.

**Brian Therrien:** So when do you suggest people do this?

**Jonathan Ginsberg:** Immediately. If ever you question it, then they send you one off every year automatically. So its not a bad idea to go and everybody should really do it. There's an address in Wilkes-Barre, Pennsylvania and you could send away for it. Then they start sending it to you every year and it will tell you how much you would get on disability and it would tell you if you have enough credits and its important to know that because there have been a few situations that I have been involved in where some body has nineteen credits, maybe twenty. I will tell them that he needs to go back and find a way to earn that \$970 to earn that extra credit, so that you can be insured for Title II disability. Here's why. If you're not insured for Title II, you are left with SSI, Supplemental Security Income. SSI, the maximum you are going to get is about \$550 to \$600 a month. It is also subject to offsets if you have any household income. If you have any kind of assets. Its much more limited then Title II disability. You are much better off in general with Title II.

**Brian Therrien:** So Title II is not big bucks but bigger bucks.

**Jonathan Ginsberg:** Bigger bucks.

**Brian Therrien:** Okay. Great.

**Jonathan Ginsberg:** Title II is also called SSDI. You sometimes hear that term, SSDI, Title II, Social Security disability, verses, SSI, Title 16 or Supplemental Security Income.

**Brian Therrien:** And what was the number of that form again?

**Jonathan Ginsberg:** 7008, Form 7008

**Brian Therrien:** 7008. Okay, it's in the guide anyway.

**Jonathan Ginsberg:** Yes, it is.

(end of Part I)