

## **Appealing your Social Security case before a judge when you have environmental illness (MCS or EHS)**



**Many people with environmental illness who apply for disability benefit payments from Social Security have to appear before a judge. Here is what to expect and how to cope.**

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The United States Social Security Administration (SSA) very often puts up a fight when people with environmental illnesses apply for disability payments.

The SSA makes its decisions based on the paper work, and it is difficult to prove MCS or EHS causes a disability since there is so little actual science available on these diseases. It works better with a holistic judgment, which is what the judge is there for.

Most people with EI eventually win when they get to the judge. This is your best chance. If you do not win at that stage, your chances are slim.

## **The SSA judge**

The SSA operates a system of Administrative Law Judges (ALJ) in each state. They work for the SSA, but for a different part of the organization than the one initially examining disability cases.

These judges will look at the paper work, listen to what the SSA says, and listen to what you have to say. They will also look at how you behave and how you present your case in your own words. All these judges do is hear SSA cases, they have seen it all. They have the power to set aside everything the SSA says; it is your job to convince them to do so.

## **The location of the hearing**

The hearing office is usually separate from other SSA offices. There may be just one in your state.

They may offer you to do the hearing via video link, especially if you live far away from the hearing office. Or you can ask for it.

Check whether the video option means you have to go to a local office or you can do it with your own computer at home.

In rare cases, they may allow you to do the hearing using a regular phone. Don't ask for this unless you really have to.

It is best to do the hearing in person. It allows the judge to better observe you, and how you interact with people you bring along. This can help your case.

The judge will notice if you get sick while in the office (unless you try to hide it). If you need oxygen or a respirator, that will be observed too.

Even if you are sick for a week afterwards, it should be worth it to go there in person.

## **Preparing for the hearing**

First, think about who to bring with you to the hearing, and start organizing that. You should not go to the hearing alone. At a minimum, you should bring a lawyer who specializes in disability cases.

A lawyer will be familiar with how the hearing is done and can help you prepare for it, besides intercede when needed.

People with EI tend not to think fast and clearly when exposed. We often forget half of what we need to say. The lawyer can help you bring forth what you are forgetting.

The SSA has some restrictions on how much the lawyer can charge, and it is common that the lawyer is only paid if you win.

Brief the lawyer about how the illness effects you. Make sure the lawyer understands how you may be affected from being in the courtroom, including making your thoughts unclear (brain fog) if that is the case for you.

Bring one or two witnesses who can tell the judge about how you live. That should be someone who lives with you or otherwise knows your daily life situation very well, such as a helper, landlord, spouse, friend or neighbor.

You can also bring your former boss or coworker, if they can tell the judge how they tried to help you stay in the workplace, but failed.

You can bring your own doctor, but doctors are typically not willing to do that. And does your doctor really understand what your situation is like?

It helps your case that the judge can see these regular normal-looking people believe you. That they do not think you are faking it.

Write down lists of your symptoms and what triggers them. Also write down things you cannot do, places you cannot go, problems at your last job, things you tried to cope at work, things you do now to cope with daily life. Those are things you need to tell the lawyer and later the judge.

Writing things down helps to organize your thoughts and makes it easier to remember.

You could even submit a statement with all this to the judge. It must be sent well in advance of the hearing. The judge will have your file handy at the hearing, so you don't need to submit anything you've already sent to the SSA.

Consider using photographs of your life situation, if they are showing obvious things, such as aluminum-covered walls or you live in a car, van, tent or camper. If you have visible reactions from exposures, such as red rashes, such pictures can help too. Print the pictures in color on letter-sized paper (or get a copy shop to do it).

## **Rebuttal**

Get the reports from any physician the SSA sent you to. They are likely to be riddled with errors.

Then get your doctor to write a rebuttal letter pointing out all these errors.

## **The hearing**

The hearing is informal. It is not at all like a court that tries criminals.

Do not bring any spectators. There is only room for you, your lawyer, and one or two witnesses for your case.

Always speak the truth. Always speak forthright, don't try to hide things. Don't try to act. Be yourself. The judge will watch very closely for any signs of fakery. EI is serious enough, you don't need to embellish the truth. There are good reasons why you are no longer working.

Be specific. Don't give general answers. Don't just say you can't work, you must explain why you cannot work, what it will do to you if you try to go to work.

It is especially powerful if you can explain things you tried to keep your job, and why they failed. If you moved to another office, or you modified your workspace, or asked coworkers to help you, and it didn't work, it shows that you tried. That helps your case.

Explain what exposures make you sick and that you do not have control over them in a workplace, or they are a necessary part of a job. Consider discussing difficulties even doing outdoor jobs, as the SSA may say you can do such jobs.

If you get sick from just being in the hearing room, tell the judge about it. Tell what it feels like right now. If the effects make you clam up, have your lawyer explain what is happening (brief the lawyer in advance that it may happen).

Tell the judge anything that was unfair about the doctor the SSA hired to evaluate you. Did the doctor allow you to say what you needed to say? Were you cut off all the time? Was it just a brief ten-minute interview? If the doctor was an allergist, you could say that is unfair as they do not treat MCS and tend to be heavily biased against accepting MCS even exists.

## **The SSA's experts**

SSA may bring along a Vocational Expert to testify that you can still do certain jobs, and thus are not fully disabled. They will then list one or more jobs to “prove” their case.

The jobs must be something you have the skills and physical stamina to do. But it is fine if you are overqualified to do them. If you are over fifty and not used to manual labor, they can't say you can do heavy construction work. But if you have a Ph.D. they can say you can do work requiring no education.

The vocational expert may not understand what living with an environmental illness is really like, and suggest things that are rather ludicrous.

Actual examples such experts claimed someone with MCS could do include “parking lot attendant” and “clean room worker.”

A “clean room” is in a factory where they make computer chips. The air is dust free, but not free of chemical fumes. Several people have gotten MCS from working in such places. In the 1980s, the media referred to it as Silicon Valley Syndrome (today they do not make chips in Silicon Valley).

They may say you can work from home using a computer. That includes meeting with other people using video conferencing (Zoom, Teams, etc).

You need to explain to the judge why you cannot do these jobs. If you can do any of the listed jobs, you have lost your case.

The only help you may get from the judge is if the job listed is not actually available (this happened when SSA suggested “dowel inspector,” a job title they may not use anymore).

The SSA may also present a physician to state that you are not disabled. This physician has never met you before and is only speaking based on what is in the written record. Obviously, this physician knows little about you.

The SSA must tell you in advance what experts they intend to present at the hearing (just as you must tell them about your lawyer, witnesses, and experts).

You and your lawyer are allowed to ask direct questions of the SSA's experts, and they are allowed to ask questions of yours. The judge will ask questions of everybody.

You can also ask questions of your own witnesses. You do that if they didn't cover an important area, or they didn't give a full answer to questions from the judge or the SSA. Or if the judge simply didn't ask the important questions. Then it is up to you to ask yourself.

### **Further appeals**

If the judge didn't side with you, there are further steps to appeal. It can especially help if the judge make any procedural errors. The lawyer should have noticed them.

You will need legal help, but your chances are getting slim.

### **Be pragmatic**

We know a case where a woman lost because she kept insisting to the judge that she should get disability based on MCS. She would likely have won if she'd accepted a psychiatric label.

That was decades ago. She had to live off her family for years, until she found some work she could do, at a place that would accommodate her disability.

### **More information**

We highly recommend the book *Nolo's guide to Social Security disability*, by David Morton.

More articles on how to get disability benefits  
[www.eiwellspring.org/disability.html](http://www.eiwellspring.org/disability.html).