

UNITED SPINAL^{NOW}

“Wet Ink” Required

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The success rate of Social Security Disability Insurance (SSDI) applicants is almost tripled when they are represented by attorneys and professional representatives than when they apply without a representative. Individuals applying for Social Security Disability can legally use a representative familiar with the process to ensure success.

Why then, in this time of COVID-19, does the Social Security Administration (SSA) confront applicants who wish to use a representative with hurdles to overcome that it does not impose on the unrepresented?

This question is being asked as it relates to the “wet ink” signature requirement to appoint a representative. Electronic signatures are accepted by SSA for many other transactions. The SSA’s rejection of electronic signatures violates the E-Sign Act and Government Paperwork Elimination Act. Imposing burdens on those who seek to be represented is unconstitutional as well, as it impedes those seeking to petition the government for redress of grievances.

SSA will accept electronic signatures on applications submitted by a claimant, but will not accept the same signature when a representative is appointed or submits the application on a claimant’s behalf. The public has not been afforded a right to comment on this substantive rule, which limits access to benefits without a statutory basis or adoption of a regulation.

Imagine you are a newly disabled individual with a spinal cord injury. The trauma, both physical and psychological, is overwhelming to you and your family members. You have a disability that is expected to last twelve months or more, and depending on the nature and extent of your injury and your past work experience, you may be unable to obtain substantial gainful employment and need SSDI, for which you are eligible because of the lifetime of taxes you have paid.

Shouldn’t you be able to get the best advice and representation to make your initial application successful? For some reason, SSA requires you to personally sign forms appointing a representative. It will reject forms electronically submitted by a representative, if it does not already have a wet ink signature, i.e. one signed personally by you — and you’ll have to start this process all over again. Why would your government make it harder for you to obtain an insurance benefit you have paid for?

It is likely that SSA will be forced to explain its position, as United Spinal Association will pursue this matter in court in the near future, if this problem is not resolved to our satisfaction. The National Federation of the Blind is also pursuing this matter legally.

Congress passed the Government Paperwork Elimination Act in 2003, which clearly instructs agencies to accept verifiable electronic signatures, and SSA does, in some cases. Slowing down an applicant’s case saves the government money, as does denying represented applicants the same rights to file electronically as unrepresented applicants. If the motive behind the “wet signature” requirement is to encourage more people to be unrepresented and thus unsuccessful, or just to slow down the process to save money, the requirement is mean-spirited and discriminatory and perhaps unconstitutional.

It is United Spinal’s intent to see this through to conclusion. We will keep you informed.