



MANAGING A HIGH VOLUME DISABILITY BENEFITS PRACTICE

By Ron Eskin¹

Introduction

Mine is a perspective on managing a practice devoted to a relatively high volume of disability benefits claims, largely, but not exclusively, seeking social security disability. Mixed in are some cases involving other disability issues, such as employment discrimination and special education. For the past twelve years out of legal services, I have not needed to adjust many of the same approaches I had used in legal services for twenty years. Managing cases in a private practice and in a legal services office have a great deal in common.

Though my management techniques use computers, they are not computer based. I have eschewed the approach of buying programs to manage for me what I need to understand how to deal with myself. I commend this approach — consider what works well for your style of practice and make the simple decisions yourself. Design the simple systems you need yourself. Do not give yourself over to someone else's thought process that you do not fully understand. Likewise, my case management techniques have evolved as useful devices which have worked for me. I have shamelessly stolen ideas which struck me as useful from friends and former employers. I constructed much of what I now use with Julie Meyer, currently a talented acupuncturist living in Maine, who had in the past worked for Western Massachusetts Legal Services, and then with me.

The Mainstays of My System

A) The Client Relationship

1) *Conduct a thorough initial interview.* My work does not permit much pre-interview screening. It did not take me long to conclude that my prior attempts at screening clients before the interview were not successful. My initial interviews normally last sixty to ninety minutes. Though they all generally cover the same ground (past work, treating sources, etc.), the interview is a discussion, which, like other discussions, works best when one does not belt out questions derived from a

form. The interview frames for me what the client's perspective and goals are in a case, so it is important that I have a good understanding of them.

2) *Develop an ongoing relationship with the client.* That means that not only must I take client calls, and return them quickly, I must regularly initiate calls to clients as I manage their cases. I must make sure that they are in treatment; that their health insurance is not cut off; that they understand how to survive while waiting for what we both hope is a successful outcome to the case. My rule is not to allow more than 60 days to pass without contact to the client. This is particularly important with a clientele which is constantly battling to stay housed. They could sink into homelessness at any time.

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3) *Remember that while all this is happening the disabled person is trying to get by without money.* This is a big problem for them. You need not handle each difficulty the client has with, for instance, the welfare department, the state Medicaid agency, the child support office or the landlord, but you should have some response to it. You should be willing to look at notices to explain how (in the instance of a public assistance or Medicaid notice) hearings can be requested with aid pending the decision, and to note what the problems are and how they may be resolved. Suggestions are quite valuable to the client and help them navigate the problem. You may have evidence in your file which would resolve the problem. It is no exaggeration that your not responding at all may result in the disappearance of a client, into homelessness, and/or an exacerbation of mental illness.

4) *At the same time it is essential to carefully circumscribe the "case" you are handling for the client.* Meet the client's assertion that "I thought you were my lawyer" with, "Not for all cases, just with this one — the social security appeal." In a high volume practice, it is important to be able to control the flow of work. I understand that in a legal services setting this is more difficult. It is the major difference I have experienced in private practice, where clients readily accept this limitation, since they are only "paying for" services in their social security case. In legal services, more people seem to observe that the advocate must handle the stream of problems they encounter because "You are there to help me." The line circumscribing what you are willing to do rests with you.

5) *Setting expectations in a legal practice, as in everything else, is the key to a client's satisfaction.* The degree to which you meet or exceed a client's expectations is the degree to which you have succeeded. Though it is easier to set expectations in a social security and benefits context where the win/loss outcome is more clearly defined (as opposed to representation in a family law or criminal law case), it is still very much an issue here. For instance, it is always a bad idea to promise that you can get a fast decision from the hearing office by submitting a request for a quick decision. Such requests are commonly turned down, and if you cannot deliver on your promise, you will frustrate the client. On the other hand, if you attempt to pursue a hard case for a client, or go the extra mile for them by submitting a request for a fast decision, they will likely be satisfied with your work. The payoff is that a client who trusts you are doing the best you can will not call you twice a week for status checks.

The Case Manager

6) *The main advocate (the one who generally talks to the client, does the hearing, writes the appeals, etc.) manages the case.* Others may handle a discrete portion of the case, but all case decisions should be made by the single person who knows the client, and who speaks to him or her regularly. This is at odds with the way many law offices handle high volume cases. Yet there is little question that the quality of the product is better, and the base of knowledge about the client is made, when most of the contact and the case management stays with a single advocate. Clients like knowing who their advocate is. They are not wrong in believing that every time a case shifts to someone new, information is lost, and perhaps just as important, a new relationship must be then built. Thus, though another person may

perform discrete tasks, such as calling the local office to assure correspondence was sent to the right place, it is in fact the advocate/case manager who is directing that action. Otherwise, it is impossible to prevent the fragmenting of tasks, and the loss of a clear direction in case management.

7) *Have a simple, clear, diary system.* Do not depend on your computer to do your work for you. Dealing with your diary is the first (perhaps the second, on some days), not the last thing you do in a day. After doing so, each case must be assigned the next date to work on the case. This is a simple but critical step in managing a large caseload. More on the diary later.

Building the Base of Legal Knowledge and Evidence

8) *Identify the theory or theories of the case early on — how it may be won.* Be prepared to change those theories with others which seem to fit the evidence better. Often the reason one was denied benefits is that the evidence describing how serious a problem actually is was inadequate. Getting to know a client better may begin to reveal more clearly how they are functioning. In cases with a long incubation period, like a social security disability case, it is possible to identify if there is insufficient evidence in a critical area. Where they exist, consultative examinations can be requested, or the client can be reminded about the significance of following regular and prescribed treatment.

9) *Copy and analyze the evidence from the client's file as soon as you realize there will be a hearing,* in order to support, reshape or entirely redefine your theory of the case. Then, begin to assemble additional evidence to fill the gaps in your theory.

10) *In an area as intensely fact driven as social security disability, it is easy to forget that cases are frequently won or lost based on a thorough understanding of the legal framework for the decision.* It is bizarre, but the number of people in the system who truly understand the regulations and policies, be they at the district office or at the hearings office, are relatively few. There are a number of sources and treatises on social security which provide excellent starting points to grasping the caselaw. The regulations and social security rulings ought to be studied and reviewed before every hearing. I recommend that advocates attend a basic benefits training regarding Social Security/SSI disability, medical assistance and public assistance more than once, and regularly read the excellent newsletters published by legal services back-up centers, like the Disability Law Center, and by private organizations, like the National

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Organization of Social Security Claimant's Representatives (NOSSCR). It also makes sense to attend a meeting of advocates, such as a NOSSCR conference, or at least a disability law center advocates meeting at least twice a year.

11) *I do not believe one can represent a client competently without a ready copy of both the regulations and the rulings at hand.* No analysis can be undertaken unless you know what must be shown in each case, and how you can use the evidence you have to show it. This analysis should be undertaken within the framework and with legal authority in these two systems. If a judge or a decision-maker in the record posits an erroneous legal position, you must be prepared to counter with legal authority. For instance, when you introduce an opinion by a social worker or psychiatric nurse which the judge says "can be given no weight since it is not from a doctor or another acceptable medical source," you must know that problem in advance of the hearing and be prepared to respond to it with legal authority. (SSR 06-3, listing rule 12.00(D)(1)(c)).

Steps in Managing Delivery of Services

Staff Assignment

The first thing that should be in place is an adequate staffing pattern — one in which everyone understands their role in advance. There were two big problems I saw in my legal services experience which I resolved not to duplicate in my own practice. First, staff responsibilities were defined historically rather than by a clear assignment of function. Second, perhaps related to the first problem, tasks were fragmented between staff, causing confusion. Exactly how the functions are allocated is a result of the current caseload and needs of the cases. For instance, it may be, as in my office now, that a caseload requires that one person is required to make all agency calls (such as calling the district offices, the disability determination offices, the payment centers in Baltimore) while another person makes all the reminder calls to the medical offices to whom records are sent. However, whatever the responsibilities, they should not be shared, except on an emergency basis. Not only does it cause duplication, but worse it creates confusion, and will often result in a task not getting done. I worked in one office which was in such disarray that a number of entries into the ongoing notes of every file consisted of remarks that a specific duty was

given to so and so on such and such a date. That clearly expressed need to protect oneself from blame for errors produced debilitating insecurity among the staff. It resulted directly from the fact that a number of people were responsible for the same task performance. It was not clear in advance who was responsible for doing what task. Assigning functions instead of blame is management's duty.

Intake

As I noted above, I do not screen disability cases on the phone for merit. However, I do screen my employment discrimination cases, special education cases, long term disability cases and post-entitlement social security cases. I disfavor forms for doing that since cases are all so individualized. My days are all managed. I see no "walk-ins." I have the luxury of not dealing with "emergencies" as I had to in legal services. Even there, I had been highly selective as to what constituted an emergency.

Once I set an appointment, all clients must be told what to bring to the initial appointment. For disability cases, we send a questionnaire to be completed prior to the appointment and brought to it. I request clients bring notices and medications to disability interviews. Special Ed clients must have educational plans (IEPs or 504 plans) for the past few years. Long term disability clients must have the insurer's correspondence and the ERISA-mandated disability plan. All clients must be interviewed before I consider them as clients. Retainers and releases, which are brief and simple, are signed at the interview. When I was in legal services, I considered retainers to be more useful in setting basic expectations rather than as forming an agreement between attorney and client. The legal services client, desperate for services and without an alternative, had no choice but to sign the so-called "contract" there. Since there are other private lawyers in my town, my retainers are contractual in nature. For that reason, I try to keep them to under a half page.

The Diary

From the time of interview, each case is assigned a date to be worked on, and a task to be performed. On that date, another date is assigned and another task is performed. Not all of the tasks are performed by me. Some are performed by a paralegal, some by a secretary. However, by the next date, the advocate/case manager is responsible for their being done. While a case is pending decision, all calls to the client, with rare exception, are handled by the advocate. Our paralegal

takes over after a favorable decision, and then he generally speaks to the client about payment issues. The advocate still handles legal questions, and issues arising concerning related benefits (such as Medicaid, public assistance, food stamps, child support, etc).

Our work on existing cases is generally structured by the diary. If a case appears on the diary for a certain task in a day, we do that task and advance the case to the next step. The diary is simple. It looks like this:

1/10/07

smith, ben — payment to client? (RE)

jones, jen — clt applied? Send appearance? (BT)

1/11/07

doe, john — retroactive benefits?(BT)

rivera, jose — dds action? (RE) (SCL)

1/12/07

jones, sam — f/u on recs from dr? (RE) (MV)

smith, stacy — appeals council action? (RE)

Building a Record

Once it is clear what is already in the record, and what evidence is needed, it is simply a matter of sending for the evidence. Records are obtainable without cost where social security benefits are at stake in a number of states, including Massachusetts and Connecticut. Other states regulate the costs of obtaining records. It is important to make sure that the providers know that you are aware of this. Reports are not the same as records and can be charged for. However, most of the professionals my clients use are sympathetic to them. They usually are willing to complete functional statements about their patients without charge. However, sometimes even those who bristle at having to produce a report without pay, may say that they will be willing to accept \$50 to \$100 to do so. It is hard to win any disability case, social security or otherwise, without an expert's report addressing functioning. In those cases in which vocational assessment is important to show the effect of one's limited functioning on the ability to perform work, a vocational assessment may be required.

Obtaining evidence and submitting it in timely fashion is obviously critical in winning the case. For social security cases, you must present all of the available evidence supporting disability AND make every legal argument you have in favor of approval by the time of the administrative law judge hearing. Otherwise you may have waived your right to do so later. *Mills v. Barnhart*, 244 F.3d 1 (1st Cir, 2001).

Appeals

Managing appeals is much the same as managing cases, however they are simpler. Writing an administrative appeals letter is the beginning of the process. One must periodically monitor the appeal to make sure it has not been misplaced. federal court appeals are only slightly more complicated. The court structures your deadlines for you, but they still need to be in a diary. Federal court appeals all have the same steps: the complaint, service of process, writing the memo and, if applicable, the reply. I rarely consent to magistrate jurisdiction to render the final decision, thus there may be one more step in the district court. If the magistrate rules against me I file specific objections and request *de novo* review by the district court judge. If I lose in the district court, I consider appeal to the court of appeals only if the errors by the agency consist of a clear error in interpreting the legal framework for decision making. I find it is easier to write the complaint or the memorandum as soon as I have the time. If I wait until the deadline, I might discover it falls during a busy period, and I am jammed for time. I believe that it is important to have an active appeals practice to accompany the administrative practice. It forces me to keep current on the caselaw and to articulate complete arguments I will use throughout my practice. It deepens my understanding of the areas of law in which I practice.

Final Thoughts

I enjoy practicing law rather than managing my law office. Yet I reluctantly acknowledge that certain measures must be in place to curtail my entropic nature, and to coordinate our work product. The simple measures I use, if followed, work. I spend little time thinking about management issues — this short article is the most time I have devoted to the subject in thirty years of practice. In the end, time spent ruminating about management is neither value-producing nor does it lead one to the portals of joy. My view is that time devoted to it should be minimized.

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