PART 1 - The Key Terms, Definitions and Concepts to familiarize yourself with before meeting a client: Before meeting with a potential client you should familiarize yourself with the following terms and legal analysis to prepare for the meeting. Often disability matters involve some of the most personal issues a person is dealing with and may require a couple of meeting to establish a good relationship. A client may have to share with you things they find embarrassing and or traumatic, so be prepared for an in depth interview. The following categories provide a brief overview of some of the core concepts and terms.

The Vocational Factors: Age, Education and Work Experience

1. Age Categories: assumptions are built into the law based upon a person age
   a. Advanced Age (55 and over)
   b. Individuals approaching advanced age (age 50-54)
   c. Younger Individual (age 18 through 49)

2. Determining the Skill Levels a person possesses based on Education and Work Experience - The Different Skill Levels:
   a. Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.
   b. Semiskilled work. Semiskilled work is work which needs some skills but does not require doing the more complex work duties. Semiskilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, material, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semiskilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
   c. Skilled work. Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating qualify, determining the suitability and needed quantities, of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.
   i. For a further discussion of skills see SSR 82-41, PPS-67,

3. The Different Exertional Levels for each type of work (Level of Exertion): A work classification defining the functional requirements of work in terms of the range of the primary strength activities required. The primary strength activities specifically
associated with the sedentary, light, and medium levels of exertion are set forth in sections 404.1567 and 416.967 of the regulations.

a. **Sedentary work**: Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

b. **Light work**: Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

c. **Medium work**: Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

d. **Heavy work**: Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

e. **Very heavy work**: Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work.


g. **Citation**: § 416.967. Physical exertion requirements.

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**The Categories of Impairments & Limitations Under the Law**

4. **Exertional Activity**: One of the primary strength activities (sitting, standing, walking, lifting, carrying, pushing, and pulling) defining a level of work.

   a. **Exertional Capability**: A capability required to perform an exertional activity.

   b. **Exertional Limitation**: An impairment-caused limitation which affects capability to perform an exertional activity.

5. **Nonexertional Impairment**: Any impairment which does not directly affect the ability to sit, stand, walk, lift, carry, push, or pull. This includes impairments which affect the mind, vision, hearing, speech, and use of the body to climb, balance, stoop, kneel, crouch, crawl, reach, handle, and use of the fingers for fine activities.

6. **Nonexertional Limitation**: An impairment-caused limitation of function which directly affects capability to perform work activities other than the primary strength activities.

7. **Residual Functional Capacity**: A medical assessment of what an individual can do in a work setting in spite of the functional limitations and environmental restrictions imposed
by all of his or her medically determinable impairment(s). RFC is the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs.

SSA Glossary of Terms:
Link: https://www.ssa.gov/OP_Home/rulings/di/02/SSR83-10-di-02.html
Citation: SSR83-10

**Proving Disability – The Five Step Analysis For Obtaining Disability Benefits:** Social security has developed a 5 step analysis for determining if an individual is disabled. *(slides 41 – 49: review these slides for detailed information on the each step of the analysis when writing your Representative Brief)* (NOTE: Child cases are reviewed differently and contain only a 3 step analysis)

- **Overview and tips for brief writing:** In addition to being the law, the 5 step analysis provides a convenient framework to organize your brief. Addressing each issue in order ensures that the claimant’s burden has been satisfied.

- **Compassionate Allowances:** operate outside of the 5 step analysis, but are similar to meeting a listing. Special rules apply for some diseases that provide benefits quickly to people whose medical conditions are so serious that they obviously meet disability standards. Link: https://www.ssa.gov/compassionateallowances/conditions.htm?utm_medium=organic&utm_source=organic&utm_campaign=(not%20provided)&utm_term=223248859

- **Standard of Review:** De Novo review

- **Step 1:** Is the claimant employed in substantial gainful activity (SGA)?
  - **Amounts for 2016:** The monthly SGA amount for statutorily blind individuals for 2016 is $1820. For non-blind individuals, the monthly SGA amount for 2016 is $1130.
  - **NOTE:** these amounts change annually, you can research on [www.ssa.gov/](http://www.ssa.gov/) historical SGA data.

- **Step 2:** Does the claimant have an impairment or a combination of impairments which are severe and have lasted for more than 12 months?
  - **NOTE:** This step is a de minimus standard under the case law. HOWEVER, we have noticed that judges still sometimes use to deny claims. Typically, the ALJ will find that some of the conditions meet the standard but not others.
  - **NOTE:** In this section you should list each of the claimant’s impairments along with the earliest documentation of each to support the alleged onset date while showing the impairment(s) lasted more than 12 months

- **Step 3:** Does the claimant have an impairment or combination of impairments which meets or equals an impairment listed in **Appendix 1 20 C.F.R. Part 404, Subpart P**?
  - **NOTE:** each listing has its own specific criteria and should be full reviewed. You should review each of the claimant’s conditions to see if they meet a list. Keep in mind that the criteria for a compassionate allowance may differ from listing criteria for the same condition. The link to find each adult listing is below.
• **Step 4:** Is the claimant capable of performing work which he performed in the 15 years prior to his application for disability benefits? (see Dictionary of Occupational Titles)
  
  o **NOTE:** Past relevant work includes only those jobs a claimant performed within the last 15 years, that was substantial gainful activity (SGA), and that lasted long enough for the claimant to learn the job. 20 CFR §416.960.
  
  o **NOTE:** the initial client interview is a great time to comply details regarding this issue because usually people can tell you why they couldn’t go back to a particular job they previously work.
  
  o **NOTE:** Under both steps 4 & 5, you can utilize ALL the documented impairments to make your argument. When appropriate, these steps can be combined for the sake of ease when addressing these issues. This is especially true for individuals who have not worked at all in the past 15 years before their onset date.
  
  o **Specific Vocational Preparation (SVP):** The SSA uses the SVP rating to determine the skill level of your past relevant work. These ratings indicate how long it takes a worker to learn to work at an average performance level. Training obtained through vocational schools, past work experience, the military, apprenticeships, college, transferrable skills from previous work, college, etc. The SVP becomes applicable in both the 4th and 5th steps of the analysis and also during VE’s testimony.

• **Step 5:** Can the claimant engage in work existing in significant numbers in the national economy considering his residual functional capacity, age, education and work experience?
  
  o **NOTE:** The ALJ must determine the **residual functional capacity** (RFC) of the claimant based on medical evidence and testimony. Then, to find the claimant not disabled, the judge must get testimony from a vocational expert
  
  
  o **Citation:** SSR 83-10

• **Step 5.1 – The Grids:** a table of guidelines that considers the follow factors: age, education, previous work experience and exertional limitations
  
  o **NOTE:** non-exertional limitations are NOT a part of the grids analysis
  
  o Even though the Grids come into play after step 4 of the analysis, they provide a great lens for examining a disability case through because they take into account a person ages, education, previous work experience and exertional impairment:
  
  o **Expanded Explanation of The Grids:** *(slide 48)*
    
    - The grids are a table (or chart) that considers the following factors:
      - Age
      - Education
      - Previous Work History (Skill Level); and
      - Exertional impairments that limit an individual to the following: sedentary work, light work or medium work (not heavy work)
    
    - Below is a portion of the actual grids for individuals that are **limited to sedentary work:** to use the grids there must be a medically documented exertional impairment that limits an individual to either sedentary, light or medium work. If so, plug in the factors (Age, education and previous
work skill) into the appropriate chart. Below is a sample of the chart with the link to the full chart.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous work experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>201.01</td>
<td>Advanced age</td>
<td>Limited or less</td>
<td>Unskilled or none</td>
<td>Disabled</td>
</tr>
<tr>
<td>201.02</td>
<td>......do</td>
<td>......do</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.03</td>
<td>......do</td>
<td>......do</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Not disabled</td>
</tr>
<tr>
<td>201.04</td>
<td>......do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work</td>
<td>Unskilled or none</td>
<td>Disabled</td>
</tr>
<tr>
<td>201.05</td>
<td>......do</td>
<td>High school graduate or more—provides for direct entry into skilled work</td>
<td>......do</td>
<td>Not disabled</td>
</tr>
<tr>
<td>201.06</td>
<td>......do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Disabled</td>
</tr>
</tbody>
</table>

Link to the Grids: https://www.ssa.gov/OP_Home/cfr20/404/404-app-p02.htm
Citation: Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

**HIV Listing Information:** The New HIV Listings can be found at:
https://www.ssa.gov/disability/professionals/bluebook/14.00-Immune-Adult.htm#14_11

**14.11 Human immunodeficiency virus (HIV) infection.** With documentation as described in 14.00F1 and one of the following:

- A. Multicentric (not localized or unicentric) Castleman disease affecting multiple groups of lymph nodes or organs containing lymphoid tissue (see 14.00F3a). OR
- B. Primary central nervous system lymphoma (see 14.00F3b). OR
- C. Primary effusion lymphoma (see 14.00F3c). OR
- D. Progressive multifocal leukoencephalopathy (see 14.00F3d). OR
- E. Pulmonary Kaposi sarcoma (see 14.00F3e). OR
- F. Absolute CD4 count of 50 cells/mm3 or less (see 14.00F4). OR
- G. Absolute CD4 count of less than 200 cells/mm3 or CD4 percentage of less than 14 percent, and one of the following (values do not have to be measured on the same date) (see 14.00F5):
  - 1. BMI measurement of less than 18.5; or
  - 2. Hemoglobin measurement of less than 8.0 grams per deciliter (g/dL). OR
- H. Complication(s) of HIV infection requiring at least three hospitalizations within a 12-month period and at least 30 days apart (see 14.00F6). Each hospitalization must last at
least 48 hours, including hours in a hospital emergency department immediately before
the hospitalization. OR

- I. Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed
in 14.11A-H, but without the requisite findings for those listings (for example, Kaposi
sarcoma not meeting the criteria in 14.11E), or other manifestations (including, but not
limited to, cardiovascular disease (including myocarditis, pericardial effusion,
pericarditis, endocarditis, or pulmonary arteritis), diarrhea, distal sensory polyneuropathy,
glucose intolerance, gynecologic conditions (including cervical cancer or pelvic
inflammatory disease, see 14.00F7), hepatitis, HIV-associated dementia, immune
reconstitution inflammatory syndrome (IRIS), infections (bacterial, fungal, parasitic, or
viral), lipodystrophy (lipoatrophy or lipohypertrophy), malnutrition, muscle weakness,
neurocognitive or other mental limitations not meeting the criteria in 12.00, oral
hairy leukoplakia, osteoporosis, pancreatitis, peripheral neuropathy) resulting in
significant, documented symptoms or signs (for example, but not limited to, fever,
headaches, insomnia, involuntary weight loss, malaise, nausea, night sweats, pain, severe
fatigue, or vomiting) and one of the following at the marked level:
  o 1. Limitation of activities of daily living.
  o 2. Limitation in maintaining social functioning.
  o 3. Limitation in completing tasks in a timely manner due to deficiencies in
     concentration, persistence, or pace.

Additional Terms to be familiar with

1. **Filing Date**: the date the application for benefits was filed
2. **Date last insured**: Last applicable date for a person to obtain their SSDI benefits
3. **Alleged onset date**: date the claimant became unable to work due to their impairment(s)
   a. **NOTE**: The alleged onset date can be amended prior, during and after the hearing
   **NOTE**: If a claimant is eligible for Social Security disability benefits (SSDI),
   there is a five-month waiting period before you benefits can be paid. Social
   Security will pay a claimant’s first benefit for the sixth full month after the date
   they find the disability began.
   b. **NOTE**: both the filing date and alleged onset date can impact a claimant’s benefit
      amount in various ways. It is important to review and compare the following
      relevant dates: alleged onset date, date last insured and application date. For
      example, an onset after the date last insured will result in an inability to obtain
      SSDI benefits. You must review all the relevant rules to understand the impact of
      a change. You will also want to compare the alleged onset date to the medical
      record to make sure a date is appropriate.
4. **Work Credits**: earnings combined into credits and used to determine when a working
   individual who paid taxes has disability insurance from the SSA. Applies in the context
   of SSDI.
5. **Broad World of Work**: Work which exists at all exertional levels. It may include skilled
   and semiskilled work as well as unskilled work
6. **Consultative Exam**: exam paid for by social security that is usually their doctor, not the
   treating source
7. **Vocational Expert** *(slide 76)*
PART 2 - The Initial Client Meeting: This is a short list of Forms to complete at the initial client meeting:

1. 1696 Appointment of Representation
2. Medical Records Releases
3. 501 Appeal with disability report: if the appeal has not already been filed by the claimant
4. Providing them with Function Forms to bring to their doctors
5. Preparing for a Dire Need Request: You can request a dire need request in many situations to expedite the hearing process because the typical waiting time is over 400 days between the request for hearing and the actual hearing. A dire need situation exists when a claimant alleges any of the following circumstances:
   a. The claimant is without food and is unable to obtain it.
   b. The claimant lacks medicine or medical care and is unable to obtain it, or the claimant indicates that access to necessary medical care is restricted because of a lack of resources.
   c. The claimant lacks shelter (e.g., without utilities such that his or her home is uninhabitable, homelessness, expiration of a shelter stay, or imminent eviction or foreclosure with no means to remedy the situation or obtain shelter).
   d. Absent evidence to the contrary, accept a person's allegation that he or she does not have enough income or resources to meet an immediate threat to his or her health or safety. ODAR employees will err on the side of designating the case critical. If a dire need situation becomes non-critical, the critical designation can be removed or modified.
   f. Citation: Hallex I-2-1-40. Critical Cases

Key Facts to Determine: Included is a SSA disability questionnaire that we utilize on intake to gather various information about the case.

1. Age of Claimant: very important for utilizing the grids and/or determining RFC
2. Date last worked: may clue you into many issues regarding the individual. Whether a particular event caused them to stop working versus whether a person has never really worked. Also note if a person has gone from a skilled to unskilled position and vice-versa
3. The Claimant’s current work if any: It is okay for the client to work while awaiting a decision and should not disqualify them for benefits if under SGA. However, be prepared to address why the person is not working at SGA level.
4. The Claimant’s Past Work: types of work and positions held within the last 15 years prior to the alleged onset date. You should note any advancements, transferrable skills, etc.
   a. You want to know: (1) type of job, (2) position, (3) weekly hours worked, (4) income, (5) how long did they work there, (6) reason for leaving that position, and (7) why does claimant think he/she can no longer perform that job full-time.
   b. Did the Claimant have an unsuccessful work attempt: an “unsuccessful work attempt” is a point in time where a claimant was working over SGA but for a short period of time. The SSA has precise rules for applying this that should be researched if this particular issue arises.
5. **The Claimant’s Past Education:** Focus on last grade completed, GED obtained, any college or vocational training, etc. Also ask about being in any special education classes or the need for special teaching aids.

6. **The Claimant’s Current Treatment & Medications:**
   a. Any current side effects from the medication?
   b. Any scheduled tests, surgeries or procedures?
   c. Complaint with treatment?

7. **The Claimant’s Past Treatment & Medications:**
   a. Any previous side effects from their former medications

8. **Exertional Limitations:** It’s always a good idea to ask about specific tasks and specific parts of the body. Examples:
   a. Do you have any trouble standing, walking, lifting, sitting, etc.?
   b. Do you have any pain, weakness, cramps, loss of range of motion in your hands, feet, arms, etc.?

9. **Nonexertional Limitations:** These can be understood as everything that is NOT an exertional limitation. Typically symptoms from mental health disorders such as anxiety, depression, mood swings, aggression, agitation, etc. go into this category. Can be outside the realm of mental health, vertigo for example. Problems using dominant hand for fine manipulations, need to elevate legs for a significant part of the day, need to frequently switch between sitting, standing, and laying down, need to take frequent unscheduled breaks in addition to regularly scheduled breaks

10. **Drug or Alcohol Abuse:**
    a. Ask about any current use and frequency?
    b. Reported and or treated by any Doctors?
    c. Have any Doctors told you that the drugs/alcohol are contributing to or causing your physical or mental health impairment?
    d. Have you been to any detox or rehab programs, clinic, AA, etc.
    e. Do you have any willingness to participate in any detox or rehab programs
    f. NOTE: SSR 13-2p

**PART 3 - After the initial client meeting:** Most of the work a head is clerical paperwork, sending out forms and papers to various entities. It is simple stuff, but it is very important to start your work immediately because it can take weeks or months to get some responses. The following is a general to do list at this step:

1. Send out medical record requests
2. Send in your 1696 (appointment of representation) along with a request for a barcode to submit additional records to the Office Of Disability Adjudication And Review (ODAR)
3. Get a copy the record from ODAR
   a. **NOTE:** you should receive a disk with all the medical records and other relevant records on it. However, on occasion, you might have a paper case. If you have a paper case, you usually need to go to the ODAR office to photocopy the file. In rare occasions, they will photocopy the file and mail it to you.
b. **NOTE:** If you start taking more cases than the occasional case, you can seek to obtain access to ODAR’s Electronic Record Express (ERE) system to view and submit records online.

4. **Develop a Preliminary Theory of the Case:** examine what the client told you about their impairments, what you perceived about their impairments on your own and what medical evidence you have at this point (some clients will bring medications or records with them.)

   a. **NOTE:** It might be a long time before you get your medical records back or get to see the record from ODAR. Take notes and write down any questions you have that the records may answer.

**PART 4 – Reviewing and submitting the incoming medical records:**

Once you start receiving medical records, under the SSA rules, you are required to turn over all medical evidence in your possession to ODAR. To submit these records you will use the barcode provided by ODAR (referenced above). Each record will be exhibited by ODAR and provided a corresponding letter and number. The following is a general to do list at this step:

1. Review and evaluate all the medical records in your possession. Be sure to note any discrepancies between the impairments stated by your client and those contained in the medical records.
2. Submit all records to ODAR.
3. Start to discuss with your client any needs for additional treatment including the need to see a specialist, mental health expert or drug rehab if applicable.
4. **Discuss with your client any requests that come back with no record of treatment for possible mistakes with the request** (ask about different names used, google the actual treatment facility, etc.)
5. If a provider refuses to provide records without prepayment, you can either see if your client will pay for the records or ask ODAR to request them.
6. **At this point you might want to get letters from case workers, close friends, care takers, family members, etc. that address the difficulties they witness the claimant having from day to day.** These letters can be submitted as nonmedical evidence.
   a. You may also want someone to testify at the hearing, especially if the individual has trouble articulating their particular impairments.
7. **5 DAY RULE:** “Generally, individuals must submit or inform us about any written evidence no later than 5 business days prior to the date of the scheduled hearing before an ALJ.”
   a. **A Representative's Affirmative Duty to Assist in Developing Written Evidence:** While our regulations state that a claimant must submit or inform us of all written evidence at least 5 business days prior to a hearing, our rules of conduct place additional requirements on representatives. As discussed above, under the rules of conduct, representatives are:
      i. 1) required to act with reasonable promptness to help obtain information or evidence the claimant must submit;
      ii. 2) required to assist the claimant in complying with our requests for information or evidence as soon as practicable;
iii. 3) prohibited from unreasonably delaying or causing a delay of the processing of a claim without good cause; and

iv. 4) prohibited from actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings.

b. Therefore, we expect representatives to submit or inform us about written evidence as soon as they obtain or become aware of it. **Representatives should not wait until 5 business days before the hearing to submit or inform us about written evidence unless they have compelling reasons for the delay** (e.g., it was impractical to submit the evidence earlier because it was difficult to obtain or the representative was not aware of the evidence at an earlier date). **In addition, it is only acceptable for a representative to inform us about evidence without submitting it if the representative shows that, despite good faith efforts, he or she could not obtain the evidence.** Simply informing us of the existence of evidence without providing it or waiting until 5 days before a hearing to inform us about or provide evidence when it was otherwise available, may cause unreasonable delay to the processing of the claim, without good cause, and may be prejudicial to the fair and orderly conduct of our administrative proceedings. As such, this behavior could be found to violate our rules of conduct and could lead to sanction proceedings against the representative.


**Part 5 – Writing Your Legal Memo:** Style for writing these memos can vary greatly, but making a clear argument based on the facts in a concise and honest manner should be the unifying theme. Memos will vary greatly based upon the conditions presented by the claimant. The same attorney may write very different memos for different claimants. **The Memo and all medical records must be submitted at least 5 business days before the hearing.** The following are just key points to address when presenting your memo.

1. Clearly state your theory of the case
2. Utilize headings that clearly direct the ALJ to your legal argument.
   a. **Example:** If you making a grid argument, then state under GRID “….” The claimant should be found to be disabled because she is 61, completed only the third grade, and limited to sedentary work because of [impairment].
3. If possible, show how the record supports the claimant’s alleged onset date
   a. **NOTE:** typically my personal preference is to address this in step 2 of the 5 step analysis.
4. Avoid long legal explanations of the procedures if not necessary.
   a. **NOTE:** Judges prefer you to leave out analysis of the law. Refrain from writing a legal treatise, but do include analysis in strategic places – e.g. DAA.
   b. **NOTE:** You do not need to include a description of procedural history of this case or a discussion of the standard of review.
   c. **Example:** Under Step 1 of the 5 step analysis, if the individual has not worked at all since their alleged onset date, then a simple sentence addressing the point is all that is necessary.
5. Simplify a large record the best you can, the judge will appreciate it and you will understand the case much better.
   a. Give examples in class
6. Utilize the memo to address issue and request certain procedures
   a. You can ask for an on the record request > essentially arguing that no testimony is needed from the claimant and the record speaks for itself
   b. **If a consultative examination was not provided**, you may request one
   c. If there are wages contained the earnings summaries that the claimant is contesting during a period they claim to have not been working
      i. **NOTE:** This particular issue is unfortunately on the rise due to the increased false filings sent into the IRS. May want to advise your client to dispute this with the IRS too, depends on the individual’s circumstances.

**Part 6 – Preparing your Client for the hearing:** My preference is to start discussing the case with the claimant as soon as a hearing is set. Then a few days prior to the hearing, I recommend holding a meeting with them for a about an hour or two for hearing prep. It can be intimidating for them, so it is important to assure them that breaks can be taken if necessary and that you are there to support them. Additionally, I take the time to go through the questions I want to ask at the hearing. Your brief will typically guide the nature of your questions, but the included SOAR Questions for Direct Examination ALJ. Finally, I strongly recommend documenting the answers given by the claimant so you know what to expect at the hearing and in case the claimant changes what they say in the hearing.

**Part 7 – The Hearing before the ALJ:** The hearing before the ALJ can vary greatly depending on each ALJ. Some ALJs like to lead the discussion, ask the claimant a bunch of questions and then have you ask questions after they are done. Conversely, some ALJ will turn over the hearing mostly to you asking for opening statements and expecting you to question the claimant in detail. (Sometimes the ALJ will have you lead questioning but will tell you what they want you to ask.) Until you are familiar with how a particular ALJ runs their hearings, you will have to prepare for both kinds of situations. However, at the end of each hearing the vocational expert will be asked questions after testimony is given from the claimant. The following reflects the basic order in which the hearings tend to proceed:

1. **Opening Statement:** these vary greatly depending on the case, but generally I try to keep everything as short as possible. The ALJ has your brief and is there to talk to the claimant, not you.
2. Preliminary matters and stipulations
   a. Witness for the hearing
   b. Stipulating to VE’s Qualifications
   c. Amending the onset date
3. Direct Examination of the Claimant
4. Direct Examination of any witnesses
5. **Hypothetical Questions to the Vocational Expert** (VE): At the hearing, the judge will ask the VE if a hypothetical person (NOT the claimant – I know, it is really weird) could find work with specific impairments. Typically a judge will create about 3 hypos that
build on each other in progressive severity. It is best demonstrated through the examples below

a. **Hypo 1**: Could a hypothetical individual with the same education and work experience as the claimant, who could perform only light work, limited to simple routine instruction, find jobs in significant numbers in the national economy?

b. **Hypo 2**: could that same hypothetical individual as previous described but with the following additional impairments find work in significant numbers in the national economy?
   1. Additional Impairments:
      1. Limited to minimal contact with the public
      2. Off task 20% of the day

c. **NOTE**: If possible, have the judge question the VE first. SSA has the legal burden to prove that there are jobs that exist in the national economy that the claimant could work. Unless the judge finds that the claimant has only exertional impairments, to fulfill this burden, they need the testimony of the vocation expert. The judge will provide the VE with a hypothetic person that has specific impairments as outlined by them. Typically, the ALJ will provide the VE with several hypotheticals that build in severity with each hypo. **IF AND ONLY IF, ALL THE HYPOS COME BACK WITH NO JOBS** and **if you feel strongly that the judge will find that your client has at least one non-exertional limitation**, then waive your right to ask the VE questions. You do want to create hypos that might come up with jobs if the judge couldn’t come up with a hypo that has jobs in the national economy. Again, it is the SSA’s burden; NOT the claimant’s.

6. Any Requests that need to be made to the Court
7. Closing statement