

Legal Report

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Surging Disability Claims Slow Processing Times for Claimants

Larry Gatti, a 47-year-old former fork lift operator from Tonawanda, NY, received his first check from Social Security Disability (SSD) at the beginning of December. Due to complications from diabetes and depression, Gatti has not worked since 2009, when he filed his initial application for SSD. Social Security determined that he has been disabled since June of that year, when Gatti's doctors told him not to return to work.

"It's been very stressful," Gatti said. "My wife works but these days one breadwinner isn't enough. We have had our water and gas shut off, we've had to use the Food Bank -- without help from our family and friends

I don't know how we would have made it through this past two and a half years."

most claimants waiting 483 days from initial application to receiving benefits, we have the third longest wait time in the country."



Paul Pochepan and Regina Walker (pictured above) litigated in order to obtain benefits for Larry Gatti and Jamey Kuczkowski

Next month, relief will also come for Jamey Kuczkowski, a 39-year-old who suffers from Multiple Sclerosis (MS). For the past two years, Kuczkowski, who was a laborer for a moving company, has been living with a friend in Cheektowaga while his SSD claim was being processed.

Gatti's case is not unusual, according to Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys. About two-thirds of initial applications for SSD are denied, and since the recession began, claims have surged, from 2.6 million in 2008 to 3.16 million for the 2011 fiscal year. This has caused an increase in the backlog Social Security was attempting to reduce, and an extension of the time it takes to process claims.

"The Buffalo region has one of the worst records for processing times," Freedman said. "With

"I've been borrowing from Peter to pay Paul," Kuczkowski said. "I expect to get a check for payments retro-active to March 2010. I can't tell you what a huge burden has been lifted from my shoulders."

Despite efforts to reduce the backlog of pending cases, the increased number of new hearing requests has impeded the Social Security Administration's efforts to decrease time frames for processing claims.

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Client Receives Settlement After Being Harassed by Debt Collector

Fair Debt Collection Practices Act protects rights of consumers

Harassment from a debt collector is not only upsetting, but in many situations, may even violate a debtor's rights under the Fair Debt Collection Practices Act (FDCPA).

Attorney Brad Davidzik, an associate at Jeffrey Freedman Attorneys, has secured numerous settlements for clients that have had their rights under the FDCPA violated.

In one instance, Davidzik said, "this client received a series of voicemails left on a cell phone, threatening that she would have to appear in Erie County Court the next morning if she did not contact the collection agency and settle the debt that evening. This was blatantly untrue; no court appearance was scheduled. This is the exact type of contact prohibited by the FDCPA."

Within one month of filing the lawsuit, a settlement offer was made according to Davidzik. Filing suit forces the collector to stop making calls immediately.

"There are many debt collectors that use legitimate practices, however, there a few who become very aggressive and completely disregard the rules," Davidzik

said. "And unfortunately, debtors don't always know the rules, so they don't immediately recognize they are being harassed."

Under the FDCPA, debt collectors cannot call before 8 a.m. or after 9 p.m. They cannot call at times known to be inconvenient to you, and they cannot call a workplace if the debtor has asked them not to call there.

"They also cannot talk to relatives, friends, or neighbors and tell them that they are calling about a debt. Their statements must also be truthful and not misleading in any way," Davidzik said.

"We have many clients who are on Social Security Disability and who have collectors call to say that their SSD benefit is going to be garnished. That is usually not the case; in almost every circumstance, Social Security payments cannot be seized by a creditor," he said.

Once a lawsuit is filed, it will stop the harassment, send a message to debt collectors that they must stick to the letter of the law in their collection efforts, and may even help a client pay back the debt they owe.



Brad Davidzik

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"With 9.1 percent unemployment, if a disabled person who was able to work at a certain job because their employer made accommodations for their disability has been laid off, their prospects for finding a new job are very dim," Freedman said. "Employers are more likely to hire healthy workers for whom they don't have to make accommodations, who potentially will be in the workforce longer."

Gatti and Kuczkowski were both aware when they filed for SSD it was likely their initial applications would be denied, and that the wait time to receive benefits would be a long one. They both also said retaining the service of an experienced law firm such as Jeffrey Freedman Attorneys helped relieve the stress of getting through the process because they

knew everything was being handled as quickly and efficiently as possible.

"The stress during those two and half years, though, definitely worsened my condition," said Gatti, "Even with the health insurance provided by my wife's job, I ran up medical bills for co-pays. It was also stressful for my son and daughter (ages 20 and 18), who tried to help out as much as they could."

Social Security Disability is not a gold mine. The average monthly check is around \$1,070, but both Gatti and Kuczkowski are relieved they'll soon be getting benefits.

"I wouldn't wish this on anyone," Gatti said. "At least now I won't have to rely as much on my family and friends."

State's Ranking of Automobile Insurers is a Valuable Tool for Auto Owners

In December 2011, the New York State Insurance Department issued a list of the worst and best auto insurance companies in the state. This list, available to the public at: www.dfs.ny.gov under the title: 2011 Annual Ranking of Automobile Insurance Companies, is based on the number of complaints determined to be valid, divided by the dollar amount of the total premiums written by the insurers.

"This ranking, produced by the New York State Department of Financial Services, is a valuable tool for every automobile owner in this state," said Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys at Law. "Most consumers don't realize that the purchase of automobile insurance is a major purchase -- often in excess of \$1,000 per year -- and they should research that purchase just as carefully as they would a new TV or car."

Christopher Kerr, a personal injury litigator at the Freedman firm, says not all insurance companies are created equal, and those offering low cost policies are not usually the best choice.

"Something has to be sacrificed and it is typically customer service and coverage," he said. "Customers are often loyal to a company for many years. Then when they have their first claim they discover the insurer is very difficult to deal with and the agent from whom they bought the policy is no help with the claim department."



Consumers should remember that the insurance agent is just a salesperson for the company, who often has a vested interest in selling particular coverages. Even in companies that don't sell through agents, the claims department is completely separate from the sales department, and its service may not compare to the service the client receives when he or she is purchasing the policy.

"When a client has been treated badly during the claims process, they often call us, saying 'I am not the kind of person who sues, but look at the way I've been treated,'" Freedman said. "They are very frustrated with their insurer's customer service and the fact they don't have the coverage they thought they had."

During the first appointment clients have with the Personal Injury

department at Jeffrey Freedman Attorneys at Law, the attorney asks them to bring the declarations page from their insurance policy to determine what is actually covered.

"Many people are surprised and disappointed by what that declarations page says," Kerr said. "You don't necessarily have to pay a lot to get the coverage you need or good customer service in the event of a claim and most people find it is well worth the extra money."

The Annual Ranking is a valuable public service provided by the state that should be accessed by any consumer of automobile insurance who wants to be well-informed about the purchase they are making, Freedman said.

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www.jeffreyfreedman.com

**Jeffrey
Freedman**
Attorneys, PLLC

The Goal of Bankruptcy: Discharge Debts

While bankruptcy itself isn't always simple, the end goal is: to discharge debts.

A person seeking to file bankruptcy is simply seeking to discharge—or have forgiven—whatever portion of their debt the bankruptcy code will allow. That amount might be 100% of debts like credit cards or medical bills in a Chapter 7, or a person might repay anywhere from 5% to 100% of their debts in a Chapter 13, depending on circumstances. However, in the end, that debt forgiveness is really what bankruptcy is all about.

Once a bankruptcy case is completed, an order will be issued as to the debt that is eligible for discharge in the case. This order from the bankruptcy court, prevents creditors from trying to collect a debt that is being discharged in the case. It is essentially a “release” or “forgiveness” of personal liability on those debts.

The pathway to the discharge can be different for different debtors, but in general it requires a few things.

1. Full disclosure of all the things you own and all the things to which you are entitled.
2. A complete list of your creditors.
3. Working closely with your attorney to provide him or her with all the necessary documents and evidence needed to complete the paperwork.
4. Though most property is protected, or “exempt” in bankruptcy, sometimes there are tough decisions to be made about what property to keep, or whether to keep paying on a vehicle or home that is not affordable. You will walk through these decisions with your lawyer's guidance.
5. Completion of two credit counseling courses.
6. Attendance at a meeting of creditors to give testimony about what your bankruptcy petition says.



7. Following through with all the trustee's requirements.

Once these steps have been completed, so long as there aren't any other issues, the end result should be the discharge of your eligible debts. The process doesn't have to be overbearing, so long as you have hired an accomplished attorney. Call us today to speak with one of the attorneys in our office who have the expertise to help you reach your goal: to receive a discharge of your debts.



Lucy Licursi, manager of our Social Security Disability and SSI Department, recently celebrated her 20th anniversary with the firm.

Lucy began with the firm on a part time basis during college, and started full time once she graduated. She has an associate's degree in paralegal studies from Hilbert College and a bachelor's degree from SUNY at Buffalo in legal studies. This education combined with her years of experience here at Jeffrey Freedman Attorneys, have made her our in-house expert on all things Social Security. Congratulations Lucy!

FAQ's About the Veterans Disability Compensation Process

Every year, thousands of claims for Veterans Disability Compensation benefits are rejected or denied, even though a Veteran and his or her family deserves those benefits. Appealing a denial can be a complex process with questions about paperwork, rules and more. Let us help you through this process.

Q: How do I qualify for Benefits?

A: A person can qualify for benefits if they have a service-related disability and have not been discharged from the military under dishonorable conditions. Service-connected disabilities might include hearing loss, loss of limb, traumatic brain injury (TBI), or Post Traumatic Stress Disorder (PTSD), to name just a few.

Q: How do I apply for Veterans Disability Compensation?

A: An application can be filed online at the www.va.gov, or at your local VA office, or VA medical facility.

Q: Is it tough to be approved for Veterans Disability Compensation?

A: Sometimes it can be. The application itself is a 23-page form, which might be overwhelming to complete on your own. Also due to a backlog in claims, some veterans might wait six months or more for an initial decision.

Q: What amount does Veterans Disability pay?



A: The benefits can be anywhere from \$123 to \$3,100 per month, or more. The amount depends upon your type of disability and number of dependents you may have.

Q: Why should I appeal an initial decision from the VA?

A: It may be that you disagree with a decision which says you are not disabled at all, or maybe you believe your disability is more severe than the VA has rated it. In either scenario, you should consider an appeal.

Q: Do I need an attorney?

A: We would recommend having an attorney to represent you. The VA will have an attorney presenting their side of the case, and so should you. Call our office today; we would be happy to speak with you regarding your claim.

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