

Discharge Application: Total and Permanent Disability (OMB No. 1845-0065)

U.S. Department of Education's Responses to November 7, 2011 Comments from Legal Services NYC

December 9, 2011

Comment:

Overall, both the prior and proposed Discharge Applications seem to meet the goal of information collection with a minimal reporting burden on the public. However, there is one significant area of concern on the proposed form that has been carried over from the prior application. "Section 4: Physician's Certification" contains a misleading question that substantially increases the burden on applicants and reduces processing efficiency. Question #1, "Ability to Engage in Substantial Gainful Activity" requests that physicians indicate an applicant's ability to work via a check-off box. However, the question is written so poorly that many doctors, who believe their patient cannot work, check-off the wrong box. This triggers rejection of the application, even when the doctor's belief that the applicant cannot work is easily discerned from the rest of the application.

The question as printed is as follows:

1. Ability to Engage in Substantial Gainful Activity. Does the applicant have a medically determinable physical or mental impairment (as explained in Item 2 below) that **(a)** prevents the applicant from engaging in substantial gainful activity, in any field of work, and **(b)** can be expected to result in death, or has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months? **Yes No**

Substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. If the applicant is able to engage in any substantial activity, in any field of work, you must answer "No."

IF THE ANSWER TO QUESTION 1 IS NO, DO NOT COMPLETE THIS APPLICATION.

Although there are details on how the question is to be answered, the heading which is in bold and more prominent print, causes doctors to choose an unintended response. One of our affiliate offices, South Brooklyn Legal Services (SBLS) has recently helped five student loan debtors with disability discharge applications. On four of the five, physicians have unintentionally answered "question one" incorrectly. At times, SBLS discovers the mistake before applications are submitted. However, there are instances that an application is rejected due to this common mistake. Rejection of worthy applications naturally lead to longer processing times and unnecessary burden on applicants, physicians, and advocates. Correcting these forms, prior to and post submission, generally lead applicants and advocates to make numerous phone calls, letters, and visits to busy doctors' offices. Clearly, this increases the time and burden on all parties, but the disabled applicant, in particular.

Despite obvious barriers to the ability to work indicated throughout the form, applicants are still denied. One glaring illustration of the problem is the case of “Ms. R.”, a 94 year-old woman suffering from Alzheimer’s disease. The physician’s certification indicated that Ms. R. had Alzheimer’s and dementia and was unable to move, speak, or do anything for herself as she was bedridden. However, in response to Question 1, “Ability to Work”, the doctor instinctively checked “No” instead of the requisite “Yes.” Ms. R.’s application was denied. These sort of unnecessary denials are especially harmful to clients whose age, severity of illness, or dire financial circumstances require urgent debt relief. Indeed, Ms. R’s Social Security was being garnished for her student loan debt. Moreover, getting a busy doctor to re-do a form is an un-necessary hurdle that many disabled student loan debtors cannot clear.

We strongly request that the form is revised to prevent the continuation of this ongoing and easily preventable problem. We join in our colleagues’ recommendation from the National Consumer Law Center, that the form be amended as follows:

1. Medically Determinable Physical or Mental Impairment. Does the applicant have a medically determinable physical or mental impairment (as explained in Item 2 below) that **(a)** prevents the applicant from engaging in any substantial gainful activity, in any field of work, and **(b)** can be expected to result in death, or has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months? **Yes No**

Substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. If the applicant is able to engage in any substantial gainful activity, in any field of work, you must answer “No.”

If the answer to Question 1 is No, do not complete this application.

We believe this rewriting of the question inspires physician’s to read the question fully before answering thus dramatically reducing the number of applications rejected based upon doctors’ mistakes.

Response:

We have made the recommended change. In Item 1 of Section 4, the words “Ability to Engage in Substantial Gainful Activity” have been replaced with “Medically Determinable Physical or Mental Impairment.” Hopefully this change will result in fewer incorrect responses of “No” by physicians who may not have carefully read the entire question.