Address of Hal Daub, Chairman
Social Security Advisory Board,
To the Fourteenth National Educational Conference
Association of Administrative Law Judges
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I am pleased to have this opportunity once again to join you for your National Educational Conference, to talk with you about the work of the Social Security Advisory Board, and, in particular, to talk about the transformation that is taking place in the disability adjudication process.

As I am sure you know, the Social Security Advisory Board has, over the past several years, devoted much of its attention to carefully studying the disability programs. We have issued reports calling attention to both procedural issues and the broader question of whether the definition of disability that the program has operated under for nearly a half-century is consistent with our society's basic disability policies.

On the procedural side, it has been clear for a long time that this is a program with major problems.

Some of these problems are a result of inadequate resources to deal with continually growing workloads, and the Board is very much aware of that issue. We have supported the Commissioner's efforts to obtain the needed additional resources and will continue that support.

But the challenges facing the disability program go deeper than resources. The Advisory Board's reviews of the program led us to the firm conviction that there are

many areas in which fundamental change is needed. There is clearly a need for reducing the time it takes to reach decisions. Many individuals do get through the system in a reasonable amount of time, but other claims drag on, especially in the appeals process. For those who enter the appeals process, waiting over a year for a decision is the norm and waiting for multiple years is all too common.

There are also large inconsistencies in outcomes at different levels of adjudication, different regions, and within similar impairment categories. Some of these inconsistencies may be appropriate in view of the protracted timeframes for completing the process and because of real geographic differentials in population characteristics. But the program has lacked the informational tools to tell us what the causes are. There has been no effective overall quality management system. The policy base of the program has been weak. Training has been inadequate. And, the program has been operating with heavy reliance on inefficient paper processes supported by obsolete systems that are not integrated from one level to the next.

Attempts to address these challenges have been made in the past and have failed. But now, we are seeing what can, should, and must be a true transformation of the adjudication system into one that provides America's disabled citizens the prompt, accurate, consistent, and fair adjudication of their claims that they deserve. There are many lessons that we have learned and must continue to learn from the failures of the past, but giving up is not one of those lessons.

We are now seeing the gradual and careful implementation of a truly electronic claims processing system that will, in and of itself:

- speed up the gathering and organization of evidence,
- facilitate remote consultations,
- end the inexcusable but previously unavoidable "lost folder" problem, and
- provide excellent new tools for producing management information and effective quality reviews.

Already there are some States enjoying fully electonic processing and the number will rapidly increase. As with any change, there will be some growing pains, but what the Board has seen so far points to an ultimately successful implementation of eDib.

Important as eDib is and will be, this is not the week of eDib. This is the week that the comment period closed on the Commissioner's proposed regulations for a new adjudication process. On Monday, the Advisory Board transmitted its comments on those proposals to the Commissioner. You can see those comments in full on our website: ssab.gov (that is SocialSecurityAdvisoryBoard dot Gov). But today, I would like to tell you a bit about how we developed those comments, mention some of the most significant points we made, and talk with you about what I think the new process means for you.

Our comments were grounded on the Board's years of careful study of the program including many visits with SSA staff in Baltimore and around the country:

- in regional and Field offices,

- in State agencies, and
- in hearing offices.

We have also listened to outside experts and commissioned consultant reports.

Since the Commissioner first announced the outlines of her new approach, we have particularly focused our attention of that plan. After the regulations were proposed this July, we intensified our efforts. We invited representatives of many interested parties to meet with us and our staff--in our office or by teleconference--to get the widest possible array of views. Your President, Ron Bernoski, was one of those who took the time to bring your perspectives to us, and we also met with a number of other Administrative Law Judges. I would like to digress just a bit to congratulate all those many individuals and groups who provided their views to the Commissioner as she was developing the regulations and who submitted their own detailed comments on the proposal. And, in particular, I congratulate the Association of Administrative Law Judges for organizing a series of round table discussions over the 2 plus years. Those round tables helped everyone to understand and comment on the new approach as it was developing. Our overall assessment of the proposed regulations is that they do, indeed, represent a very appropriate response to the Board's call for fundamental change in the disability adjudication process. We pointed out, however, that they are only the launching point towards that goal. True success will depend on careful, flexible, well-managed, and well-resourced implementation.

And we know that this will not be easy. There is tremendous pressure on the disability program and on the appellate process in particular. You have made strides in

improving productivity this year. Over 519,000 SSA hearings were held this year – up from 2004. And this was done at the same time that resources had to be devoted to clearing out the Medicare cases. Still, pending workloads continued to rise rapidly, and more and more cases came in the door. Somehow, we all have to find ways to handle the existing caseloads and successfully implement the changes because the growth in initial claims will only increase as the Babyboom generation moves more and more into its disability prone years.

But we need to look past the existing huge caseloads and see that this proposed new process is a new opportunity to finally address many of the troubling issues that the Board has heard as we met with Administrative Law Judges over the past several years.

In one sense, the process changes that directly relate to the Administrative Law Judge stage of the appeals process are limited, but they are significant.

One of the topics that you and your colleagues have frequently raised as we visited hearing offices is the need for more orderly procedures for dealing with appeals at the hearing level. The new regulations address many of the specific suggestions we heard:

- by closing the record once the ALJ has issued his decision,

- by establishing timeframes for scheduling hearings and for the submission of evidence, leaving ALJ flexibility to accommodate unusual circumstances, and
- by specifically authorizing ALJs to order prehearing and posthearing conferences.

Important as these changes at the ALJ level are, I believe the hearing level will be even more substantially changed by the parts of the new regulations that deal with what comes before and after the hearing stage—the new reviewing official position and the elimination of Appeals Council review.

The Board is convinced that the reviewing official is a positive and major step in making the job of the ALJ more efficient. While DDSs do a tremendous job adjudicating millions of cases each year under time and resource constraints – those cases that do make it to the appeals process too often:

- lack thorough development of medical information,
- need clearer explanations of the basis for the earlier decision, and
- have a claims file that is not appropriately organized for handling in the appeals process.

Having to address those problems after the claim arrives at the hearings level is one of the major reasons why the process is so protracted at the hearings level, and that, by itself, creates additional problems. By the time that case gets to the ALJ there may be new impairments or a worsening in the individual's condition that will require still further development.

The establishment of a federal reviewing official, who will be an attorney and is also well trained in the application of disability program policy can assure that the case file is fully developed and well organized, that the decision rationale is clearly articulated, that due process concerns are addressed, and that agency policies are applied uniformly to all applicants.

Making this a reality will require a clear commitment to giving the reviewing official the responsibility and resources to adequately develop the file. Leaving this to the ALJ is an inefficient use of the most expensive part of the administrative process.

The elimination of the Appeals Council and the establishment of the Decision Review Board is also a major change in the adjudicative structure, and one that can and should have a major impact on the hearings process. Under the current approach, the Appeals Council remands tens of thousands of cases back to the ALJs and many cases that get beyond the Appeals Council level are then remanded by the courts. Yet we lack any effective tools for learning why so many cases are still defective after going through 3 and sometimes 4 prior levels of decision making.

The Board has long questioned whether the Appeals Council adds value to the system that is in any way proportionate to the resources it consumes. By eliminating that stage of the process, those resources can be devoted to improving decisions at earlier levels and to the creation of the new Decision Review Board, which can really carry out the task of identifying why errors are being made and help to shape policy development that will facilitate better and more uniform adjudication.

Let me briefly talk about one area in which the Board recommendations differed substantially from what we heard from most of the ALJs we talked with. The new regulations will require ALJs to include in their decisions and explanation of why they agree or disagree with the decision of the reviewing official. Many ALJs told us that they felt this was some sort of infringement on their responsibility to make an independent decision. We also heard the argument that by the time the case gets to the ALJ it is often a wholly different case because of the lengthy passage of time. The Board did not really see much merit in those arguments. We have met with, probably, hundreds of ALJs and have yet to find one who is likely to be intimidated by having to explain why he or she had a different opinion than someone else. And, while the passage of time argument might be well taken under the existing system, the new approach aims to have the reviewing official pass on a claim that is hearing-ready or very nearly so. The year or more wait for a hearing must become a thing of the past. The requirement for ALJs (and also reviewing officials) to explain the reasons for reaching a different conclusion is not meant to intimidate or annoy. It is meant as a tool, and an important tool, to help transform the hearings process from one that seems to be chaotic and irrational into one which is consistent and understandable. This will not eliminate reversals of earlier decisions, but it will give the agency and the public information to understand why there are different results. It will help assure that policy is uniformly and correctly applied and that problem areas can be identified and remedied. It is a way for you to help make this a more transparent and effective system.

Successful implementation of the new regulations will also require that management not only listen to but actively address problems that are brought to its attention by sources within and outside the agency. As leaders in the agency, it is especially important that the AALJ take an active and positive role in guiding change. I would urge you to continue to engage the Commissioner and her Deputies in discussions regarding measures that can be taken even before the new regulations are fully implemented to lessen some of the problems the regulations seek to remedy. For example, using subpoenas to overcome recalcitrance on the part of some providers, encouraging the adoption of best practices such as making claims files available for copying early in the process to facilitate early submission of evidence, and more effective use of the rules for sanctioning representatives who do not properly carry out their responsibilities to claimants.

Everyone has a stake in making the disability program better. The new regulations are important, but other improvements must also be pursued. The Board is in the early stages of a new study that will focus on performance management in the Office of Hearings and Appeals. And we know that there have been close to 40 previous "studies" on OHA, but these focused primarily on process and implementation issues within the hearing offices. We plan on taking a systematic look at the organizational structure to see if it truly meets the needs of its employees and the public. We began some preliminary discussions with a few of you at our July Board meeting and we have used this

conference as another opportunity to meet with several of you to gain perspectives and to help shape our study design.

The Board also continues to look at the need for rethinking the basic definition of disability. We will be holding a public hearing in Dallas on November 15 and that will focus on gathering input into what a revamped disability system might look like. We are convinced that the disability program needs to be more in alignment with the Americans with Disabilities Act and to facilitate maximum economic self-sufficiency, equal opportunity and full participation in the labor force. We hope to have a fairly well developed description and issue a position paper by September of next year.

So, as you can see, we – like you – have a lot ahead of us, a lot of challenges, but a lot of great opportunity.

Before I take your questions and comments, on behalf of the Board I would like to say thank you for the work you do serving the disabled of this country. I know you have a difficult and complex job. Unfortunately things are going to get more complicated as you implement eDib and the changes in the disability process while still processing the enormous backlogs that confront you under the old system

The good news is automation and an improved process will bring about better service for the American public. It will take patience and perseverance, but I am confident that the good people that work for the Office of Hearing and Appeals will successfully implement these major changes. During difficult times it is especially important that everyone

involved in the disability process work together to meet the needs of the public and to find ways to improve this program.