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Health, Education and Human Services Division

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September 16, 1997

The Honorable William V. Roth, Jr.
Chairman, Committee on Finance
United States Senate

The Honorable E. Clay Shaw
Chairman, Subcommittee on Human Resources
Committee on Ways and Means
House of Representatives

Subject: Supplemental Security Income: Review of SSA Regulations Governing Children's Eligibility for the Program

The Congress made the Supplemental Security Income (SSI) eligibility criteria for disabled children more restrictive in Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act, enacted in August 1996 in order to help ensure that only needy children with severe disabilities be eligible for benefits. From the end of 1989 through 1996, the number of children receiving SSI disability benefits more than tripled, from almost 300,000 to more than 1 million. This growth occurred after the Social Security Administration (SSA) initiated outreach efforts and issued two sets of regulations that made the eligibility criteria for children less restrictive, particularly for children with mental impairments.¹

One regulatory change, implemented in December 1990, revised and expanded SSA's medical listings for mental impairments by incorporating functional criteria into the listings and adding such impairments as attention deficit hyperactivity disorder. The other regulatory change, implemented in February 1991 in response to the Sullivan v. Zebley Supreme Court decision, added an individualized functional assessment (IFA) to SSA's disability determination process as a basis for finding children eligible for SSI. Children who had previously been denied because their impairments did not meet or equal SSA's medical listings could now be found eligible if the IFA determined that their

¹Social Security: Rapid Rise in Children on SSI Disability Rolls Follows New Regulations (GAO/HEHS-94-225, Sept. 9, 1994).

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impairments substantially limited their ability to act and behave in age-appropriate ways.²

On February 11, 1997, SSA issued interim final regulations tightening the eligibility criteria for children to receive SSI disability benefits.³ The regulations, which became effective on April 14, 1997, implement legislative changes to the SSI disabled children's program made by Public Law 104-193. You asked us—under our responsibility to report on the effect of the legislative changes on the SSI program—to review the eligibility criteria in the new regulations to determine their consistency with the law, focusing in particular on the provisions describing how severe a child's impairment must be in order for the child to qualify for benefits.⁴

In addition to analyzing the regulations themselves and SSA's regulatory analysis documenting its rationale for the new severity level, we reviewed the public comments on the regulations and interviewed SSA officials. In summary, we found the agency's regulations to be consistent with the law and well supported.⁵

**ELIGIBILITY CRITERIA IN REGULATIONS ARE
CONSISTENT WITH THE LAW AND WELL SUPPORTED**

Public Law 104-193 enacted several provisions that made the eligibility criteria for disabled children more restrictive: (1) It changed the definition of

²The medical listings for childhood impairments are regulations containing strict medical criteria for evaluating physical and mental impairments.

³In light of the congressional mandate to issue regulations needed to carry out the new statutory provisions as expeditiously as possible, SSA determined that there was good cause to waive the notice of proposed rulemaking procedures. Instead, in accordance with the Administrative Procedure Act, SSA issued interim final regulations with a request for public comments. SSA stated that it would issue revised rules if necessary.

⁴Section 232 of Public Law 104-193 requires GAO to report on the effect of these changes to the SSI program.

⁵GAO reported to the Senate Finance Committee and the House Ways and Means Committee that the regulations comply with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5, U.S. Code. (See GAO/OGC-97-23, Feb. 26, 1997.)

childhood disability from an impairment comparable to one that would prevent an adult from working to an impairment that results in "marked and severe functional limitations," (2) it eliminated the IFA as a basis for determining eligibility for children, and (3) it removed maladaptive behavior from consideration when assessing a child's personal/behavioral functioning. Thus, such behavior would be considered only once—in the assessment of that child's social functioning—when determining whether the child had a mental impairment severe enough to meet or equal the medical listings.⁶

To implement the new law, SSA issued interim final regulations that defined an impairment that results in "marked and severe functional limitations" as one that meets or medically or functionally equals one of SSA's medical listings. For a child to be determined eligible for benefits under this new and stricter standard of severity, his or her impairment must generally result in marked functional limitations in two areas of functioning, such as social and motor skills, or an extreme limitation in one area. Under the previous IFA standard of severity, a child was generally found eligible if his or her impairment resulted in moderate functional limitations in three areas of functioning or a marked limitation in one area and a moderate limitation in another area. SSA also eliminated the IFA and removed the duplicate consideration of maladaptive behavior from the mental listings.

During the public comment period for the draft regulations, SSA received more than 175 written comments from individuals and organizations, many of which expressed the view that the new eligibility standard in the regulations is more severe than the law requires. More recently, media reports have criticized the stringency of the new regulations. Many of the critics of the new standard of severity stated that an impairment that results in a marked limitation in one area and a moderate limitation in another is severe enough to meet the new statutory definition of disability for children.

SSA rejected the "one marked, one moderate" level of severity as the standard. In its regulatory analysis, SSA gave several reasons for concluding that the law and legislative history made clear that the Congress meant to establish a stricter level. First, the Congress eliminated the "comparable severity" standard

⁶In taking legislative action, the Congress considered our findings on the subjective nature of the IFA process and the need to improve eligibility determinations for children with disabilities. See Social Security: New Functional Assessments for Children Raise Eligibility Questions (GAO/HEHS-95-66, Mar. 10, 1995).

of disability, which had established an additional evaluation beyond the listings, and it eliminated the IFA, which was created for evaluating impairments that were less severe than those in the medical listings. Further, a "one marked, one moderate" standard of severity would have retained one of the standards under which children were found eligible under the IFA, which SSA stated would violate the law. Finally, SSA interpreted the conference report accompanying the act as indicating the congressional intent that the listings would be the last step in the disability determination process for children.

We found the interim final regulations to be consistent with the law. We believe SSA was well within its authority in establishing the new level of severity, and its rationale for doing so was well supported.

RESULTS OF REDETERMINATIONS TO DATE
ARE IN LINE WITH EXPECTATIONS

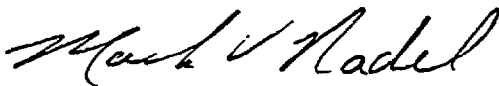
The new eligibility criteria also apply to children already receiving SSI benefits. Public Law 104-193 requires SSA to redetermine the eligibility of children on the rolls who may not meet the new eligibility criteria because they received benefits on the basis of maladaptive behavior or the IFA. Recipients can elect to continue benefit payments during the appeal process. SSA identified 288,000 children as potentially affected by the changes in the eligibility criteria. In its regulatory analysis, it estimated that 135,000 children (46.9 percent) would lose benefits under the new eligibility criteria contained in the interim final regulations.

Through September 6, 1997, SSA has reviewed the eligibility of 246,211 of the 288,000 children. Of these, 116,670 (47.4 percent) were found eligible to continue to receive benefits and 129,541 (52.6 percent) were found ineligible. Those continuing to be eligible include 86,595 children found eligible after initial redeterminations done by the state disability determination services (DDS), 1,751 children found eligible by the DDSs upon appeal, and 28,324 children who had been awarded benefits on the basis of an IFA but whose impairments were now found through a file review to have been severe enough at the prior determination to qualify under the listings. For these latter cases, SSA modified its records to show that the awards were based on the listings and continued benefits to these children without further review. The 129,541 ineligible children include 6,624 who were found ineligible for reasons other than disability and 122,917 who were found ineligible after redeterminations, including 966 found ineligible by the DDSs upon appeal.

Because the number of children deemed to be ineligible by this review does not yet reflect the results of all appeals, we do not yet know what the final outcome on all these cases will be. Children initially deemed by a DDS to be ineligible have 60 days to request the DDS to reconsider their case. If they continue to receive an unfavorable result, they can appeal to an SSA administrative law judge, and, finally, to federal court. To date, 46.7 percent of the children with initially terminated benefits for whom the 60-day appeal period has expired have appealed for a DDS reconsideration. Although SSA states that the early results of the redeterminations cannot be projected to the total number of redeterminations required by the law, we believe the early results are in line with SSA's expectations.

We discussed a draft of this letter with SSA officials responsible for these regulations. They agreed with our findings and made other technical comments, which have been incorporated where appropriate.

If you have any questions about the information we have presented, please contact me on (202) 512-7215. Other major contributors are Cynthia Bascetta, Ellen Habenicht, and Daniel Schwimer.



for Jane L. Ross
Director, Income Security Issues

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