REFORMING THE DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME DISABILITY PROGRAMS

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REFORMING THE DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME DISABILITY PROGRAMS [1]

The Nation's two primary disability programs – Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) disability – are a vital but complex part of our social insurance and welfare systems, requiring vigilant attention in order to keep their policy and administrative structures sound and up to date.

These programs have grown steadily over the years to the point where in fiscal year 2002 they are expected to account for nearly $100 billion in Federal spending, or nearly five percent of the Federal budget. They require a growing portion of the time and attention of Social Security Administration employees at all levels. In 2002, about two-thirds of the agency's $7.7 billion administrative budget, $5.2 billion, is expected to be spent on disability work.

As the baby boomers reach the age of increased likelihood of disability the growth in these programs will accelerate. The Social Security Administration's actuaries project that between now and 2012 the number of DI beneficiaries will increase by 37 percent. SSI beneficiaries are projected to increase by 15 percent. The projected growth in the number of disability claimants threatens to overwhelm a policy and administrative infrastructure that is already inadequate to meet the needs of the public.

In recent decades, disability policy has come to resemble a mosaic, pieced together in response to court decisions and other external pressures, rather than the result of a well thought out concept of how the programs should be operating. Compounding the problem, the disability administrative structure, now nearly a half century old, has been unable to keep pace with the increasing demands that have been imposed upon it. Policy and administrative capacity are dramatically out of alignment in the sense that new and binding rules of adjudication frequently cannot be implemented in a reasonable manner, particularly in view of the resources that are currently available.

It has been more than two decades since either the Congress or the Administration has reviewed in a comprehensive manner the question of whether the administrative structure established nearly five decades ago should be strengthened or changed. Numerous regulations and rulings affecting how disability decisions are made have been implemented without review by policy makers. The question of whether the definition of disability for adults should be changed has not undergone close examination for more than 30 years.

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[1] For more information on this subject, see the Advisory Board's January 2001 reports, *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change* and *Disability Decision Making: Data and Materials*, as well as *How SSA's Disability Programs Can Be Improved*, issued in August 1998. The reports are available at the Board's website, www.ssab.gov.

Major Issues Need to Be Addressed

Are disability decisions consistent and fair?

There are substantial data that show striking differences in decisional outcomes over time, among State agencies, and between levels of adjudication, raising the question of whether disability determinations are being made in a uniform and consistent manner.

For example, in 2001 the percentage of disability applicants whose claims were allowed by a State agency ranged from a high of 66 percent in New Hampshire to a low of 27 percent in Tennessee. As another example, a strikingly large percentage of cases denied by State agencies are reversed upon appeal to an administrative law judge hearing, and, at least at the State level, there appears to be no correlation between high State agency allowance rates and low ALJ reversals of these decisions. Both State agency and hearing level allowance rates have varied substantially over the years. The hearing level allowance rates (allowances as a percent of all decisions) for both DI and SSI disability stood at 58 percent in 1985, grew to nearly 72 percent in 1995, fell to 63 percent in 1998, and grew again to 66 percent in 2000 and 68 percent in 2001.

For many years both Members of Congress and others who have studied the disability programs have expressed concern about variations such as these. Analysts have identified many factors which they believe contribute to inconsistencies in outcomes, such as economic and demographic differences among regions of the country, court decisions, the fact that the claimant has no opportunity to meet with the decision maker until the face-to-face hearing at the ALJ level, and that the record remains open throughout the appeals process.

But many who are knowledgeable about the programs – including disability examiners in the State agencies as well as administrative law judges – have long believed that there are also reasons relating to program policy, procedures, and structure that are responsible for some if not many of these inconsistencies. In a recent study of SSA's quality assurance processes, the Lewin Group found that although the information on current consistency of the disability programs is somewhat mixed and not as definitive as one would like, "The evidence of inconsistencies is compelling…." [2]

Despite the long-standing concern about consistency, the agency has no effective mechanism to provide the information needed to understand the degree to which the programs' own policies and procedures – including their uneven implementation – are causing inconsistent outcomes in different regions of the country and different parts of the disability system. As long as variations in decision making remain unexplained, the integrity and the fairness of the disability programs are open to question. These programs are too valuable and important to the American public for this issue not to be addressed.

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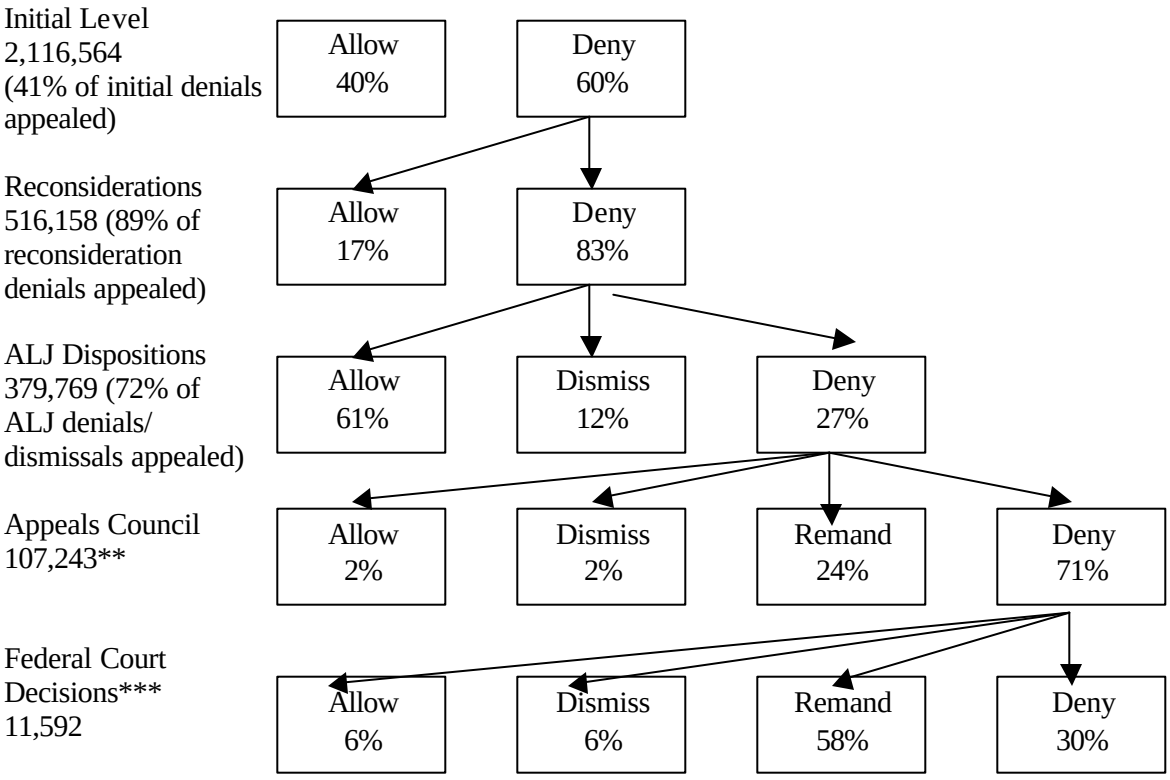
[2] The Lewin Group, Inc. and Pugh Ettinger McCarthy Associates, L.L.C., *Evaluation of SSA's Disability Quality Assurance (QA) Processes and Development of QA Options That Will Support The Long-Term Management of The Disability Program*, June 21, 2000, p. C-24.

DI and SSI Disability Determinations and Appeals*
FY 2001



Percentage of Allowances

Initial Decisions	72.5
Reconsiderations	7.5
Hearing Level	19.8
Appeals Council	.2

Note: Due to rounding, data may not always total 100%

* *Data relate to workloads processed (but not necessarily received) in fiscal year 2001, i.e., the cases processed at each adjudicative level may include cases received at 1 or more of the lower adjudicative levels prior to fiscal year 2001. Not all denials are appealed to the next level of review.*

** *Includes ALJ decisions not appealed further by the claimant but reviewed by the Appeals Council on "own motion" authority.*

*** *Remands to ALJs by the Appeals Council and courts result in allowances in about 60 percent of the cases. Court decisions include decisions on continuing disability reviews. Figures for other levels are for claims only.*

Is disability policy being developed coherently and in accord with the intent of the Congress?

Although Congress has not changed the law defining disability for adults for more than 30 years, the determination of what constitutes disability has changed in fundamental ways. For example, there has been a gradual but persistent trend away from decisions based on the medical listings to decisions that increasingly involve assessment of function. Today, many more decisions involve mental impairments than was the case in the past. In addition, changes in agency rules mean that now all adjudicators must adhere to more complex and intricate requirements regarding such matters as determining the weight that should be given to the opinion of a treating source and making a finding as to the credibility of claimants' statements about the effect of pain and other symptoms on their ability to function. All of these changes have made decision making more subjective and difficult.

These policy changes have been made through changes in regulations and rulings. A number of the most significant changes have grown out of court decisions, many of which have not been appealed. None of them have been reviewed by the Congress as to their effect on decision making or whether they are operationally sustainable for a program that must process massive numbers of cases.

Can today's administrative structure support future program needs?

When the DI program was enacted in 1956, the expectation was that the program would be relatively small. But over the last half century, the original Federal-State administrative structure has had to accommodate a growth in program size and complexity that it has been ill equipped to handle. In addition to working within a fragmented administrative structure, employees at all levels have been buffeted by periodic surges in workloads and funding shortfalls.

At the present time, all parts of the applications and appeals structure are experiencing great stress with every indication that the difficulties each is facing will continue to grow unless changes are made. There are about 15,000 disability adjudicators throughout the disability system. Their qualifications and the rules and procedures they follow differ, sometimes dramatically. For example, adjudicators at the State agency and ALJ levels may receive vastly different training and draw upon very different resources. Factors such as these raise questions about how well the administrative structure will be able to handle the growing workload.

Is Social Security's definition of disability appropriately aligned with national disability policy?

There are many who believe that the Social Security Act definition of disability, which requires claimants to prove they cannot work in order to qualify for benefits, is inconsistent with the Americans with Disabilities Act and is at odds with the desire of many disabled individuals who want to work but who still need some financial or medical assistance. Recent Ticket to Work legislation is aimed at helping people who are already on the disability rolls to return to work by providing increased services and new incentives, but does not fully address these basic inconsistencies.

In recent testimony the Consortium of Citizens with Disabilities questioned whether the Social Security definition of disability adequately captures "the spectrum and continuum of disability today. Does it reflect the interaction of vocational, environmental, medical and other factors that can affect the ability of someone on SSI or SSDI to attain a level of independence?"

Reform Should Have Clear Goals and Objectives

Reform of the disability programs must be evaluated within the context of clear goals and objectives:

- All who are truly disabled and cannot work should receive benefits.
- Those who can work but need assistance to do so should receive it.
- Vocational rehabilitation and employment services should be readily available and claimants and beneficiaries should be helped to take advantage of them.
- Claimants should be helped to understand the disability rules and the determination process.
- The disability system should provide fair and consistent treatment for all.
- The disability system should ensure high quality decisions by well-qualified and trained adjudicators.
- The disability system should provide expeditious processing of claims. When cases are complex and require more time, claimants should be informed so that they will understand why there is delay.

The Elements of Reform

To build a disability system that can meet the challenges of the future will require changes in policy, procedure, and structure. The Board has proposed a number of changes that we urge policy makers in the Congress and the Administration to consider. These changes would represent fundamental reform. In summary, they include the following elements.

Strengthen SSA's capacity to manage

SSA's ability to manage the disability programs is undermined by three major shortcomings —

There is a lack of management accountability. Nearly every staff component of the agency has a role in administering the disability programs.

The policy infrastructure is weak. There are too many voices articulating disability policy. Adjudicators in different parts of the system are bound by different sets of rules.

Important policy elements are out of date. As the result of downsizing and lack of new staff to replace those who have left the agency through retirement or otherwise, the level of expertise in areas such as medical and vocational factors has declined.

The agency lacks a quality management system that can provide the comprehensive information that is needed for accurate and consistent decision making.

The Board recommends that SSA address these shortcomings by —

- organizing the agency so as to ensure greater accountability and unified direction for the disability programs,
- developing a single presentation of policy to guide all adjudicators and enhancing the medical and vocational expertise of its staff, and
- developing and implementing a new quality management system that will (1) provide the information that policy makers and administrators need to guide disability policy and procedures and (2) ensure accuracy and consistency in decision making.

Change the disability adjudication process

Strengthen the Federal-State arrangement. – Although the law gives SSA the basic responsibility for administering the disability programs, it requires that disability decisions be made by State agencies rather than by SSA itself. The Federal government pays 100 percent of the cost.

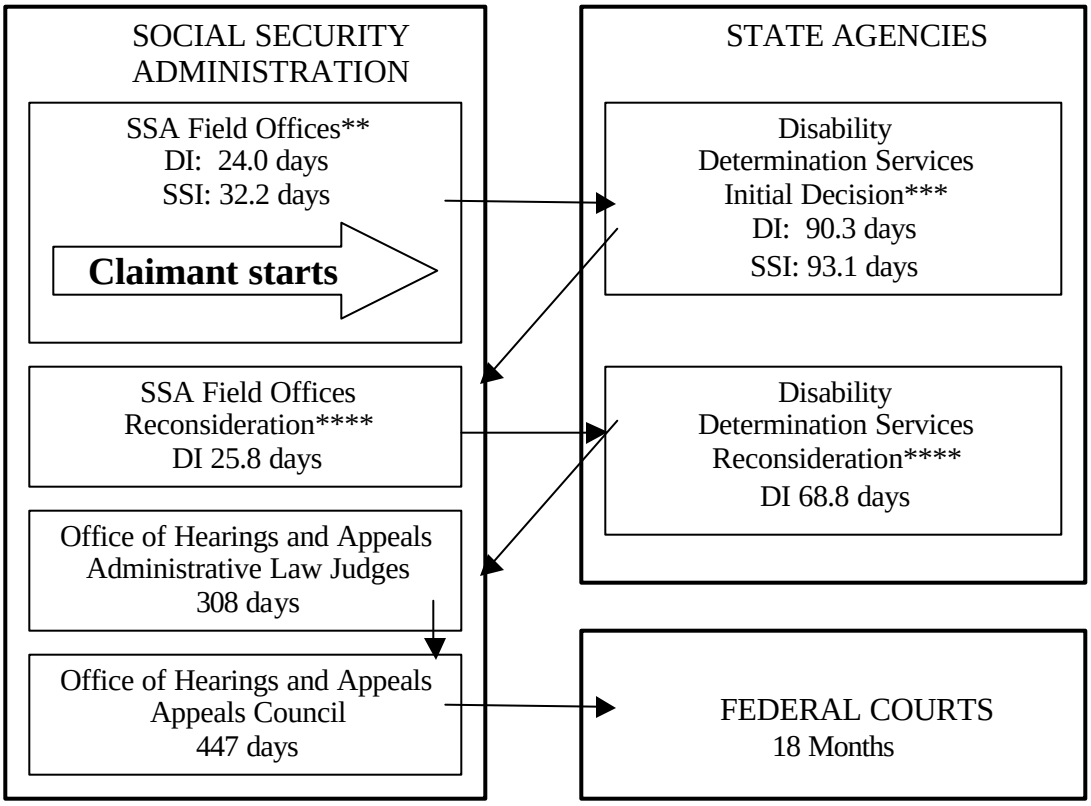
Whether the disability decision making authority should belong to the States or to SSA has been a subject of debate since Congress established the Federal-State arrangement nearly five decades ago. Proponents of federalizing the process argue that the present structure is inherently difficult to manage and that federal administration is necessary to ensure high quality, uniform administration throughout the country.

The issue of federalizing the disability determination process needs to be examined in the light of anticipated future needs of the disability programs. In the short term we believe it is necessary to strengthen the present Federal-State arrangement. Underpinning this view is the fact that SSA currently lacks the administrative and staffing capacity to take on the significant additional responsibility that federalization would entail. Nevertheless, the present arrangement is inadequate to meet the needs of the disability programs today, and problems need to be addressed as quickly as possible.

SSA's regulations should be revised to improve the agency's ability to manage State agency operations and to provide greater national uniformity. States should be required to follow specific guidelines relating to educational requirements and salaries for staff, training, carrying out quality assurance procedures, and other areas that have a direct impact on the quality of their employees and their ability to make decisions that are both of high quality and timely.

Reform the hearing process. – The formal right of claimants to a hearing was adopted in 1940 with only 12 "referees" to hear appeals. But with the enactment of the disability programs, the hearing process has become massive, with about 1,000 administrative law judges and nearly 7,000 other employees.

DI and SSI Claims Process: Steps and Average Processing Time*
FY 2001



* *Processing times shown must be added at each step to find the total time*

** Field office processing time includes all components of the field office work, including taking the claim and processing it after the State agency makes a determination

*** SSA reports DDS initial processing time by programs; average total processing time (DI and SSI) is not available

*****SSA does not have data available for SSI reconsideration processing times*

Along with becoming a much larger operation than originally envisaged, SSA's hearing process has also changed as the result of the fact that most claimants are now

represented by attorneys or other representatives. Because the agency is not represented as well, many believe the hearing process has become too one-sided. We think that having an individual present at the hearing to defend the agency's position would help to clarify the issues and introduce greater consistency and accountability into the adjudicative system and, as in a more traditional court setting, would help to carry out an effective cross-examination. Consideration should also be given to allowing the individual who represents the agency at the hearing to file an appeal of the ALJ decision.

We also recommend that the Congress and SSA review again the issue of whether the record should be closed after the ALJ hearing. Leaving the record open means that the case can change at each level of appeal, requiring a *de novo* decision based on a different record. Many ALJs have told the Board that leaving the record open gives attorneys an incentive to withhold evidence in order to strengthen an appeal at a later stage, and provides an inherent incentive to withhold evidence in order to prolong the case and increase fees. Other ALJs do not believe that representatives hold back evidence for these reasons. If evidence is held back, they maintain, it is because the rules for presenting evidence are lax and representatives do not take the time or spend the money to obtain additional evidence unless required to do so as a result of an unfavorable hearing decision. Closing the record would heighten the need to develop the record as fully as possible before the decision is made in order to ensure that claimants are not unfairly penalized. Closing the record would not preclude filing a new application.

Third, we recommend that consideration be given to establishing a system of certification for claimant representatives and to establishing uniform procedures for claimant representatives to follow. The objective would be to provide for a more orderly and expeditious hearing procedure than currently exists.

Consider changes in the current provisions for judicial review. – Concerns about national uniformity in policy and procedure have led many to consider whether there is a need for change in the current provisions for judicial review. Under the current system, Federal courts frequently issue decisions that vary from district to district and circuit to circuit. Over the years a number of bills have been introduced in the Congress that would create either a Social Security Court or a Social Security Court of Appeals that would specialize in Social Security cases, thus establishing a framework that could produce greater uniformity in decision making. The statutorily-established Commission on Structural Alternatives for the Federal Courts of Appeals, chaired by Justice Byron White, stated in its final report in December 1998 that Congress should seriously consider proposals that would place judicial review of Social Security cases in an Article I court. We believe that the question of whether existing arrangements for judicial review should be retained or replaced by a new court structure deserves careful study by the Congress and the Social Security Administration.

Align policy and administrative capacity

Nearly every part of the Social Security Administration has been affected by the downsizing and restraint on government hiring that has occurred over the last two decades. But for various reasons, the disability programs in particular have tended to suffer. As resources have been constrained, SSA has issued numerous regulations and rulings that require more time and expertise on the part of all adjudicators than was the case in the past and workloads have grown substantially. The result is that disability policy and administrative capacity are now seriously out of alignment and threaten to become more so as the agency moves toward national implementation of several new initiatives.

Of particular importance are the "process unification" rulings issued by SSA in 1996, which were aimed at bringing State agency and ALJ decisions closer together. Many State agency administrators claim that some of them are so complex that State agency employees cannot adhere to them without spending substantially increased time on a large percentage of the cases they are adjudicating. In addition, these new rules for adjudicating cases require analytical and writing skills that many employees do not have.

Both the Administration and the Congress will share the responsibility for making the changes that are needed to ensure that disability policy and administrative capabilities are properly aligned. This will likely involve a combination of changes in policy, processes, institutional arrangements, and funding. In addition, the Board has urged the agency to develop a comprehensive workforce plan and base its appropriations requests on this plan, as directed by the 1994 independent agency legislation. We also urge the Administration and the Congress to exclude SSA's administrative budget for Social Security from any statutory cap that imposes a limit on the amount of discretionary government spending.

Examine ways to improve incentives for early rehabilitation and employment

The issue of whether the present structure of assistance to the disabled provides sufficient help and incentive for employment needs careful review. Many experts believe that the most effective intervention is to help disabled individuals return to work as quickly as possible. More comprehensive research on ways to improve incentives for rehabilitation and employment early in a period of disability is needed. This may include new or different arrangements for cash or medical benefits or for rehabilitation and employment services. The experience of other countries and of both private and public employers in the United States should be taken into account.

Included as part of this comprehensive research effort should be a study of whether providing some type of short-term disability assistance, combined with rehabilitation services, would improve assistance for those who have disabilities while also relieving pressure on the permanent disability programs. The studies that are conducted should include cost-benefit analyses. Where needed, specific legislative authority and funding for these studies should be provided.