National Committee to Preserve Social Security and Medicare

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The Honorable Michael J. Astrue
Commissioner of Social Security
P.O. Box 17703
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Dear Commissioner Astrue:

On October 29, 2007, the Social Security Administration issued proposed regulations that would alter the Social Security hearings and appeals process (Docket No.SSA-2007-0044). The proposed regulations would have a significant detrimental impact on individuals needing Social Security and SSI disability benefits. While we recognize the need to reduce the backlog of disability cases, we believe that there are sufficient means of doing so without denying full and fair due process to claimants.

The Social Security hearings process was designed to be an informal, non-adversarial process. Many claimants are not represented by lawyers, especially at the early stages of the process. Large numbers of individuals file an application for benefits without the help of a professional and seek help only after they have been denied benefits at the initial or hearing stages.

The new regulations create a web of rules which would effectively close off access to a fair hearings process for people with disabilities. In the name of speeding disability claims, the regulations would endanger due process.

Closing the Record

The most troubling of the regulations would close the record to relevant evidence prior to the Administrative Law Judge (ALJ) hearing. The proposed regulations require claimants to submit all evidence by 5 business days before the hearing and afford only limited exceptions to the requirement. The rule is both unrealistic and unfair. Disabled claimants often have no lawyer to help them at this point in the process; they frequently have trouble collecting medical evidence from doctors, hospitals or clinics; and they are themselves sick or elderly. In addition, many medical conditions worsen over time and require new evidence. The rule ignores the reality that medical conditions are not static; applicants are not in control of medical evidence; and claimants suffer from physical or mental impairments that likely leave them weak, poor, and unable to comprehend the process. Closing the record before the applicant has come face-to-face with an ALJ would deny a claimant in these circumstances a fair opportunity to present evidence to the adjudicator of his or her claim.

Closing the record prior to the hearing is also inconsistent with the Social Security Act's requirements. Under the Act, the claimant has a right to a hearing with a decision based on "evidence adduced at the hearing". Prohibiting the submission of evidence at the hearing certainly violates this law. Moreover, it is inconsistent with the federal courts' rulings that ALJs have a duty to develop the record. In addition, closing the record prior to the hearing would result in an increase in appeals to federal courts. That is because the proposed regulations establish more restrictive rules for submission of new evidence than the Social Security Act provides for federal courts when they remand cases to SSA for consideration of new and material evidence that was not available earlier. As a result, there will be an incentive for claimants who have been denied benefits by an ALJ and whose medical conditions have worsened to appeal to the federal courts.

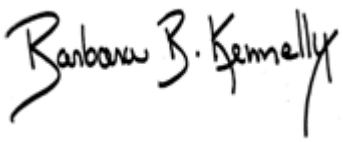
Limits on Review of an Erroneous ALJ Decision

The proposed regulations appropriately restore the claimant's right to request an administrative review of the ALJ decision. However, review of an erroneous ALJ decision by the new administrative board (Review Board) and by the federal courts is significantly restricted. Reviews of the ALJ decision by the Review Board or the court is limited to the period ending on the date of the original ALJ decision. Contrary to what is currently permitted, a claimant would be prohibited from offering evidence of a worsening of his or her medical condition during the period since the first ALJ decision. Moreover, the proposed regulation is ambiguous and could be interpreted to mean that the claimant could only be found eligible on remand for a time-limited period, ending no later than the date of the first ALJ decision. Interpreted in this way, the regulation punishes people for appealing. In addition, because they would not be considered disabled on an on-going basis, claimants would not be protected by the medical improvement standard, would lose Medicare and Medicaid coverage, and would lose access to most work incentives, including the trial work period and the extended period of eligibility.

Closing the record and limiting the period that can be considered to determine eligibility would force claimants to file a new claims for benefits, increasing the number of applications filed and clogging the system further. A claimant would be required to file a new application for any change in his disability which occurs after the date of the original ALJ decision. This burdensome and inefficient result would be avoided by allowing the claimant to present evidence and have his or her claim resolved the first time, as is currently the case.

The proposed rules would result in severe roadblocks to benefits for people with disabilities. The proposed regulations are estimated to produce $1.5 billion in benefit savings over the next 10 years. That savings is achieved by denying benefits to disability applicants. People who cannot gather medical evidence in time would be denied and discouraged from reapplying. New rules, if interpreted as time-limiting benefits, would result in less access to Medicare and Medicaid as well as work incentives. Regrettably, these rules have less to do with improving the process and more to do with restricting access to disability benefits. They will undermine the opportunity for a full and fair hearing and will leave many people with disabilities without the benefits they deserve.

Cordially,



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