

Clearing the Disability Backlog – Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned

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Social Security Advisory Board
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Chairman Rangel, Mr. McCrery, Members of the Committee. I am pleased to have this opportunity to appear on behalf of the Social Security Advisory Board to discuss the backlogs in the Social Security disability programs as well as the current funding situation. I would like to give you the Board's perspectives on the continuing challenges facing the agency and our concerns about the future.

As I reflect on the current state of affairs at the Social Security Administration I am reminded of Sisyphus from Greek mythology. As you will recall, the gods condemned Sisyphus to endlessly pushing a rock up a hill only to have it roll down again and again. It strikes me that this is exactly what is happening to the employees of the Social Security Administration who are charged with running the disability programs and the citizens who are touched by it. We owe them a better future.

Is History Being Repeated?

The difficulties with the disability program are not new to the Advisory Board. Since the Board's inception in 1995, the bulk of its work has focused on the disability program. I personally have been on the board for more than 10 years now and it has been our major preoccupation over my entire tenure. Beginning with one of the Board's earliest reports in 1998, we expressed concerns about the sustainability of the program given the anticipated growth in the workload, its resources, its labor intensive processes, and the perceived lack of consistency in applying Social Security's own policies. And that was at a time when there were only 1.2 million new claims filed every year, and the backlog in the hearings process was under 400,000 claims. Moreover, this was after a period when the agency had diverted resources from other parts of the program in order to return the appellate process to a semblance of efficiency.

But by 2001 the Advisory Board felt compelled to issue another report citing deteriorating service in the field offices and a disability program that was swamped with a backlog of claims. By 2001, Social Security's capacity to serve the public was increasingly at risk due to a long-term reduction in staff levels, increased volume of claims, and the overwhelming burden of complex program rules. The then-Chairman of

the Advisory Board told *The New York Times* in February 2001 “Unless there’s fundamental change, we will soon see disruptions of service. The Social Security agency lacks the ability to handle existing workloads, and those workloads are bound to increase in the next decade. Everybody knows there is a long-term deficit in the financing of Social Security. But there’s also a deficit in the agency’s ability to provide good service, and that should be equally alarming to Congress and the public.”

When I appeared before the Social Security Subcommittee in February 2007, applications for disability benefits were averaging 2.5 million per year. The Disability Determinations Services (DDS) had a little less than 550,000 initial claims pending. But this DDS pending backlog was due to extraordinary pressure on the DDSs to adjudicate initial claims as a priority workload. What gave the impression as being good customer service at one stage actually resulted in increased workloads and delayed processing downstream. Resources were diverted from processing reconsideration cases in order to process the initial claims. The backlog at the DDS’s reconsideration stage grew by 30,000 and an ever-larger fraction of individuals found themselves waiting nearly 6 months for an initial decision.

On average, about 75 percent of those denied at the reconsideration level file for a hearing before an administrative law judge. So, it should be no surprise then that as the DDSs cleared out their backlog of reconsideration cases, cases flowing into the hearings level climbed to 579,000. By the end of 2007, there were 746,000 cases in the hearings queue waiting for an ALJ judgment.

Today, we are half way through Fiscal Year 2008, a year in which the Congress actually increased the President’s budget request by \$150 million. The additional funding has provided SSA with some flexibility this year. The SSA managers have not had to choose between hiring administrative law judges and keeping the lights on in the field offices. I would like to tell you that this one time injection of additional resources has been enough to turn the tide. But it has not.

Today there are over 560,000 initial claims and 107,000 requests for reconsideration pending in the DDS and another 756,000 claims at the appellate level. I suppose that if there is any “good news” it is that the waiting time for a hearing has held steady at 503 days in the Office of Disability Adjudication and Review. Personally, I believe that taking an average of 503 days to process these cases at the hearings level should be an embarrassment to us all.

The Social Security Administration’s employees have always taken pride in their “can do” attitude even in the face of growing workloads, new workloads, and insufficient resources. But the reservoir of optimism is low.

We can talk about our commitment to public service and our willingness to address the needs of those individuals who turn to Social Security on a daily basis. But the reality is

that thousands of disability cases languish for years as the claims representatives, the disability adjudicators, and the administrative law judges struggle with crushing backlogs and steadily declining numbers of workers. If we want to achieve the goals of this program, we have to pay for it.

Pressure on the DDS has Negative Affects on the Hearings Level

The focus of this hearing – clearing the backlogs and providing adequate resources – needs to be about more than just the state of the workload at the hearings level. It must take into consideration the critical steps all along the determination process. It must recognize the problems with the systems infrastructure that supports the work being done by staff at all levels. It must acknowledge that the baby boomers that will cause problems for the retirement program down the road are now in their disability prone years resulting in increased applications that would require higher productivity if the workforce handling cases remained stable. But it has not remained stable; we have seen the result of the triple jeopardy: a workforce that is being shrunk relentlessly, steady workload increases, and a lack of technological investments that could balance demands.

DDS claims processors operate under processing time, productivity measures, and quality control rules that put unreasonable stress on their process and, as a result, change behavior. Forcing managers to choose to adjudicate one type of claim, whether it is an initial claim or a request for reconsideration, over another sends a very strong message about their relative importance. Moreover, a quality review process that targets allowance decisions almost exclusively also sends an unintended message. Only a small fraction of denied cases are selected for quality review. The chance of an insufficiently documented denial determination sliding through the system unchecked cannot be discounted. There may be many reasons why there has been a steady decline in allowance rates in the DDS, but it certainly seems likely that inadequate investment which has led to a “start and stop” type of work environment is a major factor. This is not about a culture of denial but more about human nature. When faced with pressure to clear cases quickly, adjudicators may take shortcuts and those shortcuts can lead to unintended outcomes.

One of the initiatives in the Commissioner’s *Plan to Eliminate the Hearings Backlog* is the informal remand process. Cases that were denied by the DDS and are waiting for a hearing at the Office of Disability Adjudication and Review (ODAR) are being screened and where appropriate returned to the DDS for another look. The program has been in place for about a year now and the cases that are sent back have been purposely selected because they are the most likely to be proper allowances. Nonetheless, out of the 34,000 cases informally remanded so far, the DDSs have allowed 43 percent and well over two-thirds of those were allowed without any additional development. There are a variety of reasons why these cases are now being approved without gathering more evidence than was gathered months or years ago, but we cannot discount that processing pressures in earlier stages of adjudication could have caused inadequate review the first time around. An added sad footnote to this story is that some of the cases now being given a favorable

disability determination after being remanded to the DDSs sat in the hearings queue at the ODAR level for three or four years before being returned for DDS review. Of course, this gives rise to the question: If we had enough evidence years ago to decide that these applicants were disabled, why didn't we reach the conclusions then?

From the Board's perspective, there must be investment in the front end of the process. SSA and DDS management should not have to make choices about which cases are adjudicated timely and fully developed and which are not. But that is the situation in which the disability system managers continue to find themselves.

SSA has made tremendous strides in the development of the electronic folder. For all of its strengths, it has some striking weaknesses; primarily that it is not a "single system". Case production processes are not coordinated from beginning to end. First, there are 50 state DDSs plus five other territories and offices working with five different basic IT operating systems. Even in cases where DDSs are on a common main platform, there have been variations in their adaptation from one DDS to the next. While all of these operating systems and their variants feed data to the electronic folder, the actual development and decision analysis is captured only in each DDS's own case processing system. And beyond that, there is virtually no end-to-end consistency in developing and adjudicating cases.

The main goal in initiatives like the development of the electronic applications folder may be to drain the backlog swamp, but there are so many alligators nipping at the various components they have lost focus on the way forward. Consider the development of an approach to support the systematic case determination process for the DDSs. To this end, an electronic tool, known as eCat, was created to help adjudicators develop claims on a consistent and complete basis. The budget to develop this system was cannibalized from the Social Security operating systems budget resulting in a patchwork approach to development and support. Robbing Peter to pay Paul is generally a recipe for failure, but it is particularly unwise in systems development.

The eCat system was rushed through development, was unfinished at roll out, did not work when it was put into production and brought the rest of the electronic case processing system to a grinding halt. As a result, a promising new tool was pulled from operation because of poor execution and the rush to premature implementation. Today, there is a new initiative underway in a lab environment that appears to hold great promise, but it is not clear how it will be integrated into an overarching integrated system.

While the eCat experience is disconcerting, we recently learned that the Office of Disability Adjudication and Reviews is evolving its own electronic adjudication tools to take advantage of the electronic folder, including a format for decision writing that is designed to bring greater consistency and improved productivity. It appears that ODAR has only cursory awareness of the DDS eCat initiative and has had no input into its

development even though they are the “recipients” of the decisional outcomes. Furthermore, they have not been able to explore how eCat can lead to efficiencies in the hearings development process. There appears to be a lack of a holistic electronic systems strategy that is linked to a well thought-out process structure, that is properly resourced and that emphasizes the interdependence of the operating components.

Building an Infrastructure for the 21st Century

Ten years ago the Advisory Board questioned how well the Social Security Administration would be able to develop the technological infrastructure that would be needed to support the growing number of claims. We believed then as we do now that in order for the agency to meet its workload challenges, it must have a forward- thinking service delivery strategy that capitalizes on advances in technology. The National Research Council issued a very compelling report last year wherein they stated that the agency faces fundamental challenges in its ability to deliver services and urged SSA to articulate a vision for electronic service delivery.

Furthermore, they highlighted the very real vulnerabilities facing SSA if they did not begin a systematic transition to a more modern infrastructure. This is not about buying the latest fancy personal computers. This is about moving away from COBOL-based operating systems, a 1950’s technology, to modern software languages and tools. This is about moving away from manual work sampling to integrated data collection that permits inline measurement and quality review systems that can assess what works, what does not, and the difference between the two. We are talking about the potential for redesigning work in an organization that is stifled by institutional barriers between components and work rules that are crippling productivity advances.

When Social Security Commissioner Michael Astrue took over his current position, he found a backlog of disability applications that had been in the ALJ hearings queue for more than 1,000 days. Last year he set as a goal for the agency disposing of all of these cases. This year, he has set as a goal eliminating the backlog of some 135,000 cases that would be 900 days old at the end of the fiscal year. Commissioner Astrue and the people involved should be applauded for implementing any effort to reduce hearings backlogs and waiting times for decisions.

Yet we read in the *Federal Times* last week that a group of Social Security employees has filed a complaint against the agency because the implementation of the electronic disability application process has reduced the number of days that case technicians in the Office of Disability Adjudication and Review can work at home as they help prepare cases for ALJ hearings. In this modern era, with concerns about the security of private personal information in government files, Social Security has determined that applicants’ electronic files must be maintained on agency computers and the implementation of the new technology has reduced the amount of work that can be done outside of office sites preparing cases. The mediator hearing this complaint has ruled that Social Security must

reinstate the work-at-home policies that were workable in the old paper-file world but outmoded in the modernized environment.

One cannot help but wonder whether the taxpaying public might find it ironic that it is unreasonable to expect people who are being paid to prepare disability cases for hearings to come to the office to work during the time they are being paid but that it is reasonable to expect disability applicants to wait up to 899 days to have their appeals for benefits heard by an ALJ. The parsing of this story may help to explain why all of the leading candidates for President from both political parties have sensed the American public's desire to change the way things are done in Washington.

We are painfully aware that future Congresses and Administrations will be facing resource constraints that will become more austere than anything we have seen to date. Rather than commit to long-term increased support of what is an unsatisfactory process for the stakeholder at all levels, maybe it is time to restore a temporary multi-year capital fund to modernize the functions at all levels of this operation and develop systems to implement the solutions. This capital budget would be for limited duration and come with a stipulation that the net results be a modern integrated system that delivers efficiencies in the operation, increases throughput of workloads, and shortens the processing time for applicants. If there is need for legislative action to modernize and facilitate the determination process as part of this modernization effort, the agency should come forward with recommendations to achieve this.

Invisible Workloads

In the Advisory for this hearing, the Committee noted that the agency is forced to divert resources away from routine workloads in the processing centers in order to manage the volume of cases awaiting decisions. This is an unfortunate trade off to be forced to make. Without adequate funding for the post-entitlement work done in the processing centers, the spouses and children of disabled workers may not receive their benefits in a reasonable timeframe. Beneficiaries who report earnings on a timely basis may be overpaid because the workers in the processing center could not reconcile the information in time to make the needed adjustments. SSA estimates that it will cost around \$400 million in FY 2009 just to keep on top of this backroom work, annually, without consideration of what work is already unresolved. Unless there is sufficient investment in this workload, the post-entitlement backlogs will be the next headline.

As the agency that touches virtually every individual in the country through its benefit programs or through its repository of records, SSA is the agency that Congress turns to when it needs assistance with carrying out broad national initiatives. The welfare reform legislation in the mid-1990's meant that the field staff had to become experts in immigration and naturalization records; Medicare Modernization rules mean that they now have to make more complicated Medicare premium calculations based on complex tax rules, and they have acquired an ongoing workload comprised of determining the

qualifications for Medicare Part D low income subsidy redeterminations. And now there is discussion about adding additional non-mission workloads revolving around immigration and Medicare.

Historically, Congress funds the start-up costs for these programs but does not make provisions for the ongoing costs of doing the work. The agency is expected to absorb the cost in the out years in its “base” budget. However, because fixed costs such as rent, guards, and salaries exceed the average growth in the administrative budget, there is no cushion to absorb additional work without additional resources. These workloads must be funded appropriately and that includes for the long term.

I would like to add a word of caution, however, that this is about more than just money. I know that one of the reasons that Social Security is assigned these tasks is because they have the critical national mass that does not exist elsewhere. And, they have an outstanding workforce. But the accumulation of these added mandates is reaching the point of critical stress for this agency—we are perilously close to adding the proverbial straw that breaks the spine here.

In my testimony before the Social Security Subcommittee last year, I pointed out that SSA has been forced into curtailing its stewardship responsibilities even though that workload returns benefit savings that are many times its administrative costs, \$10 in savings for every \$1 spent. By the end of this fiscal year, it is estimated that there will be just around 1.3 million claims sitting in a backlog that should have these reviews performed. I realize that there is a budgetary distinction between administrative and benefit spending, but that is an artificial distinction that most taxpayers supporting Social Security would consider ludicrous. You might want to support an incentive-based stewardship approach whereby the Agency can retain a percentage of such stewardship savings. Abandoning the ability to minimize improper payments is not only wasteful, but will worsen the future year total deficits that will constrain future discretionary spending.

Maintaining Public Service in an Era of Growing Workloads

Over the next 10 years, SSA’s workload will increase dramatically. Retirement claims will jump by over 40 percent and disability claims will rise by nearly 10 percent. Last December there was much fanfare as the first of the 80 million baby boomers applied for retirement benefits. The agency expects to process 4.3 million claims in 2008 and is bracing itself for a 23 percent increase by 2013. The recently released 2008 OASDI Trustees Report estimates that by 2015 there will be 50 million retirees, widows and widowers, and dependents receiving benefits and they will be expecting efficient and modern service from the Social Security Administration.

But the anticipated growth in claims does not stop there. The baby boomers are entering their disability prone years and the number of initial disability claims is projected to rise steadily from 2.5 million to close to 2.7 million by 2013. Unless there is a fundamental

rethinking of the definition of disability and how this vital safety net fits into the 21st century, the Trustees tell us that the number of disabled workers receiving benefits is projected to grow from 7.1 million at the end of 2007, to 8.7 million in 2015. The “silver tsunami” of the baby boomers will most assuredly place a tremendous strain on SSA’s resources unless the shortfall in funding and the need for modernization are addressed.

Long-Term Solvency

I hate to remind the Committee about the grumpy uncle whom no one wants to claim as part of the family, but I feel obligated in my position to raise with you the issue of the long-term solvency of this vital program.

The recent Trustees Report might seem to suggest that the outlook for financing has improved relative to earlier measurements. The better estimates in this year’s report relate largely to changed assumptions about immigration levels and do not change the underlying story about the challenges that our nation’s demographics pose for Social Security. Disability is part of that demographic challenge.

An aging population brings with it greater incidence and prevalence of disability. In this regard, the Disability Insurance (DI) Trust Fund component of the system is underfunded and the funding of DI is a problem that will need to be addressed by Congress. The timing of the disability funding shortfall precedes that of the Old Age and Survivors Insurance (OASI) Trust Fund. Thus, any surplus that might be viewed in OASI as a buffer will be short lived. The contingencies regarding disability and the related work limitations are substantially different than in the case of the Old Age insurance program and they deserve careful consideration. Resolving the disability financing situation and any reforms that might go along with it should not be an afterthought in the solvency discussion.

Mr. Chairman, I hope these comments are helpful to the Committee as it examines the backlogs in the disability programs and addresses the need for increased resources in order to support them. These critical safety net programs have been a major concern of the Social Security Advisory Board and we intend to keep a close watch on them. I would be happy to provide any additional information that may be helpful to you, and I would be happy to answer any questions you may have.