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# Report of the Disability Advisory Council: Executive Summary\*

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In November 1986, to fulfill the mandate contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, the Secretary of Health and Human Services appointed a special Disability Advisory Council to study and make recommendations about the medical and vocational aspects of disability under both title II and title XVI of the Social Security Act. In February 1988, that Council submitted the final report of its findings and recommendations to Secretary Otis R. Bowen. In his letters transmitting the final report to the Speaker of the House and to the President of the Senate, the Secretary said, "Among the most important things that government can do is to ensure that its programs of assistance do not discourage disabled people from working. ...the Council has taken a full and comprehensive look at the disability insurance and supplemental security income programs, and developed recommendations that it believes will induce more beneficiaries to pursue programs of vocational rehabilitation and to enter the workforce." The Executive Summary from the **Report of the Disability Advisory Council** is reprinted on the following pages.

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The Disability Advisory Council was chartered on July 3, 1986, pursuant to section 12102 of Public Law 99-272, the "Consolidated Omnibus Budget Reconciliation Act of 1985." The Charter required the Council to study three specific areas: (1) the effectiveness of the vocational rehabilitation programs for Social Security and Supplemental Security Income beneficiaries; (2) the question of using specialists to complete medical and vocational evaluations at the State agency decisionmaking level; and (3) alternative approaches to work evaluations. In her charge to the Council, the Commissioner of Social Security, Dorcas R. Hardy, asked that we also study work incentives and disincentives in Social Security Administration's (SSA's) disability programs.

After 13 meetings and 4 field hearings, the Council

has completed its deliberations and has unanimously agreed on its report, which contains more than 50 recommendations.

## Summary of the Council's Findings

### Matters of Overarching Concern

Our inquiry into the specific areas of study has convinced us that many of the problems in the Disability Insurance (DI) and Supplemental Security Income (SSI) programs are interconnected. Our identification and discussion of these problems reflect our common view that people with disabilities have the same rights and obligations with respect to work as the nondisabled. Programs serving people with disabilities, including programs of cash and medical assistance, should encourage work. We do not believe that the DI and SSI programs

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\*For full details of the Council's findings and recommendations, see **Report of the Disability Advisory Council**, Department of Health and Human Services, Social Security Administration, February 1988.

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for people who are disabled or blind should function as programs of premature retirement or as "tickets out of the workforce." Instead, they should operate on the principle that many people with disabilities, if provided with timely and appropriate services, can work and that they should be encouraged to do so.

The Council believes that some fundamental features of the DI and SSI programs militate against this goal. Our study of the legislative history has convinced us that the DI program was designed to make monthly payments to insured workers who become "totally and permanently disabled." It was presumed that SSA would award benefits to workers under the age of 65 who were "forced into premature retirement because of disability," as the House Ways and Means Committee said in its report on the bill establishing the DI program. This would seem to make program goals relatively clear—to identify and pay benefits to those insured workers who were totally and permanently unable to work on account of medically determinable conditions. Once an individual met this standard of disability, he or she would presumably be "permanently retired because of disability" and incapable of future work. With the establishment of the SSI program, this definitional standard was extended to indigent people who are blind or otherwise disabled.

But there was a second aspect of the legislation that created the DI program. The statute directed SSA to refer applicants for vocational rehabilitation (VR) services to the end that "the maximum number of such individuals may be rehabilitated into productive activity." This suggested that Congress expected some workers whose impairments were determined to be total and of indefinite duration to go back to work after receiving VR services, an expectation that is difficult to reconcile with the perception of DI as a program of "premature retirement because of disability."

As the DI program has been broadened over the years, authorizing payments to younger workers and relaxing the requirement that a claimant's impairment be of indefinite duration, this confusion between the concepts of paying "premature retirement" pensions and encouraging beneficiaries to work has grown in significance.

This confusion is perhaps most keenly felt by people with disabilities themselves. To qualify for benefits, they are obliged to prove that they are incapable of gainful employment. The process of establishing such a claim can be long and cumbersome. Such a process may be debilitating by itself because the person is certified disabled by the agency and labeled incapable of work by all concerned. Once awarded benefits, he or she is told that regular and substantial earnings will cause payments to be suspended or terminated; yet he or she may also be referred for VR services. Beneficiaries are thus sent mixed signals—they must prove that their impairments

prevent them from working for at least 12 months in order to be awarded benefits; then they are encouraged to return to work and forfeit their benefits.

Since beneficiaries generally can be removed from the rolls only if their medical conditions improve or if they engage in substantial work, many whose impairments are likely to be permanent view their entitlement to benefits as similarly permanent. They consequently regard work and vocational rehabilitation with some suspicion since wages can precipitate their removal from the benefit rolls. Their perception of the program is generally accurate—so long as their medical conditions do not improve, they will ultimately stop getting benefits only if they go to work.

The Council believes that the structure and administration of the DI and SSI programs have a great deal to do with whether beneficiaries work. These factors alone, however, cannot ensure success. While the Federal Government has a fundamental role in promoting the public welfare, it cannot alone ensure the general well-being of all its citizens. The primary role of families, communities, and employers must be recognized. The support of family members is important to the success of efforts to enhance the work capacity of DI and SSI beneficiaries and should be promoted.

It is nevertheless essential that SSA's programs for people with disabilities be changed substantially over the long term. The Council believes that the DI and SSI programs should be restructured so as to assign a higher priority to encouraging beneficiaries to work than to declaring them unable to work. We believe that it is important to develop some recommendations that may lead to more fundamental program changes in the long term.

During our discussion of possible recommendations, however, we were frustrated by the lack of data that are essential to the formulation of sound policy. For this reason, we refrained from developing recommendations that would fundamentally restructure these programs. Instead, we have recommended that SSA undertake demonstration projects that are comprehensive and that test a set of proposed changes. The agency should also sponsor research projects to examine various alternatives to the current DI and SSI programs.

## Vocational Rehabilitation

The Council believes that SSA's current VR programs have a negligible impact on increasing the capacity of SSI and DI beneficiaries to work or return to work. Thus, maximum savings to the trust funds/general revenues from the provision of VR services are not being realized. The Council believes that many beneficiaries who have the potential for gainful employment are not being enrolled in VR programs. As a result, they are being denied the means with which to improve the quality of their lives.

The Council believes that there are several significant problems in the administration of SSA's VR programs that have undermined their effectiveness.

- SSA does not routinely gather experiential data upon which to validate its current VR referral criteria. It is essential that such data be gathered and analyzed in order to improve the cost-effectiveness of SSA's VR programs.
- SSA does not maintain any direct management control over its VR programs, save through the reimbursement process. We believe it is imperative that SSA track persons referred by Disability Determination Services (DDS) units for VR services in order to see if such services are actually requested or provided and to ensure that benefits are suspended to recipients who refuse to participate in VR programs without good cause. We also believe that SSA should evaluate either periodically or on an ongoing basis the quality and cost-effectiveness of VR services provided.
- Differences in the goals of SSA's and the Federal-State VR programs must be recognized. State VR agencies wishing to be reimbursed by SSA for services rendered must assure that their VR programs for SSA clients who are referred by DDS units are geared towards the provision of services that achieve and maintain gainful employment. Further, DI and SSI applicants referred by DDS units to State VR agencies should be afforded the highest service priority by the Federal-State VR system.
- SSA's present system for VR referral and reimbursement promotes neither competition among service providers nor the involvement of employers and unions in the formulation of job goals, the identification of job requirements and job skills. SSA should promote active competition among public and private agencies and should involve employers and unions in the planning and delivery of VR services for DI and SSI beneficiaries.

## Work Incentives and Disincentives

The Council believes that the work incentive provisions now in the law for DI beneficiaries, while they have not been broadly used, can be strengthened to provide real encouragement to work. This will require that they be clearly understood and marketed as an important part of the DI program, not just as technical details. It will also require some adjustments in the way these provisions work.

The Council understands that the fear of losing benefits may be a key concern among beneficiaries. The Council believes that this fear is in part attributable to lack of understanding of how entitlement to benefits is

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protected under current law despite regular and substantial earnings. The Council believes that SSA can best address this problem by improving public information and, where possible, clarifying the rules and regulations.

The Council believes that the level of monthly earnings that currently constitutes substantial gainful activity (SGA) for workers with disabilities other than blindness (more than \$300) is too low and should be raised. The Council also believes that the monthly earnings amount that counts toward the trial work period should be increased from \$75 to the SGA level. The Council also believes that the SSI program for people who are disabled or blind contains strong work incentives for beneficiaries through the provisions of section 1619 and the plans for achieving self-support. The Council understands that SSA has undertaken a nationwide training and information program on section 1619 and other work incentives, but urges SSA to employ intensive marketing techniques to further inform SSI beneficiaries, advocates, and employers of the work incentive provisions in the law.

The Council is concerned by the preferential treatment of people who are blind compared to those with other disabilities, not only with respect to work incentives but in other areas as well.

The Council believes that work incentives are important but does not believe that financial incentives alone can ensure that all those who wish to work will be able to do so and that all those who have the capacity to work will choose to do so. Other important factors include family and community support, education, rehabilitation, job placement, and employer and community attitudes, along with periodic review of continued eligibility. Not all, or even most, of these important factors can be influenced by the DI and SSI programs. An effective policy to promote work and return to work will require a concerted and coordinated approach involving government agencies and, most importantly, the knowledge and resources of the private sector.

## Determination of Disability

The Council believes several significant problems in the structure and operation of both the initial disability eligibility determination process and the continuing disability review process currently prevent the attainment of an important program goal—to provide cash and related medical benefits to persons with severe disabilities without undue delay or expense, but only so long as those disabilities are present and the person is not performing substantial gainful activity.

Both the current variation among States in allowance rates and the volatility of allowance rates over time raise

serious questions about the basic operational integrity and fairness of SSA's disability program. The Council believes that allowance rates in these programs should not vary appreciably between States or over time, unless accounted for by differences in the number and characteristics of applicants.

The Council has three concerns about the disability decisionmaking and appeals process: (1) the wide variation in State-by-State allowance rates; (2) the high rate of appeal and reversal of SSA eligibility decisions; and (3) the length of time involved in appealing SSA eligibility decisions. Each of these implies a hardship for some applicants as well as unnecessary costs to applicants and the government. We believe that SSA's overriding concern should be to achieve a higher degree of accuracy and nationwide uniformity in disability decisions and to ensure that accurate decisions are made as early in the process as is practicable. The Council believes that the lack of uniformity in application of eligibility standards stems from:

- A lack of specificity in the rules used for determining disability;
- An inadequately controlled Federal-State arrangement for administering the DI and SSI programs; and
- An appeals process that fails to encourage the development of complete and correct evidence early in the process.

Although there was strong sentiment among Council members for federalizing the administration of the DI and SSI disability determination process, the Council has declined to make that recommendation in the hope of retaining the benefits of a decentralized administration. If this structure is to be retained, however, it must operate in a way that ensures that judgments about eligibility for disability benefits are appropriate and uniform.

The Council is concerned that the medical improvement review standard, which is used in the continuing disability review process, may not be the best way to measure whether or not someone can work. The Council is further concerned that the current medical improvement review standard places the burden of proof on the Administration rather than on the beneficiary and, therefore, may result in many people being "grandfathered" onto the disability rolls on a permanent basis when they may have actually become capable of work.

## Use of Medical Specialists in the Determination of Disability

The Council believes that medical specialists are not routinely needed for review of disability claims that involve only physical impairments. The Council does not

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recommend that SSA be required to have medical specialists sign determinations, whether favorable or unfavorable, in such cases. However, the Council encourages SSA to continue to provide DDSs with policy guidelines and training in the appropriate use of medical specialists in the disability determination process. The DDSs also should continue their present policy of using specialist review when, in the judgment of the DDS disability/physician team, such review is warranted.

### **Use of Work Evaluations in the Determination of Disability**

The Council believes that work evaluations may provide additional information that is useful in the disability determination process and urges SSA to monitor their use by DDSs. However, the Council does not believe that the use of work evaluations needs to be mandated. SSA should ensure that work evaluations are obtained when such information would be of assistance to the disability determination process.