

Statement by Mark Warshawsky  
to the Association of Administrative Law Judges  
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## INTRODUCTION

Good Morning. I am Mark Warshawsky, a Member of the Social Security Advisory Board, and it is a pleasure to be here representing the Board.

At the outset, I would like to acknowledge the very important job that you have. In your hands, you hold the future economic security of each individual claimant and his or her family who comes before you. You also make an important resource decision on behalf of taxpayers. A disability award to an average 50 year old is worth in present value terms roughly \$150,000 through the normal retirement age. Adding the entitlement to Medicare raises the value to about a quarter of a million dollars (see Autor and Duggan, 2006).

And on behalf of the Board I would like to congratulate the entire ODAR staff on your accomplishments this fiscal year. The number of claims waiting for a decision is at its lowest level in three years at just over 722,000; processing time has fallen below the 500 day mark. We know there was much concern that the emphasis on productivity would have an unintended affect on the allowance rate, however, the allowance rate has remained steady at 60 percent. This does not mean that there is no more work to be done to further reduce claims waiting and processing time. We must also continue to examine the relationship between exceptionally high—and exceptionally low producers and allowance rates. Instead, what it does tell us is that overall the ALJ corps, the Senior Attorneys, and ODAR management are serious about providing equitable, legally sufficient decisions in a timely manner. That is appropriate – the central goal of this agency should always be about providing the best possible service to the American public.

For the past seven years the Chairman of the Advisory Board has been invited to address the AALJ membership at its annual education conference—and this year was no different.

But what is different this year is that the Board does not currently have a permanent Chairperson. The term of Syl Schieber, who had been on the Board for nearly 12 years, and served for the last three years as the Chairman, expired on September 30 and he opted to retire. He will be missed by all of us at the Board, by the agency, and by Congress who could rely on him to present balanced, clear-eyed analysis of the challenges and the accomplishments of the Social Security Administration. We hope that the Administration and Senate will finalize the actions needed to fill his seat very quickly, as well as another open Board Member position and the two Public Trustees. In the interim, Barbara Kennelly is serving as the Acting Chairperson until such time as the

President appoints a new chair. We are functioning with just five Board members, instead of the seven members as set out in the statute.

Over the past 18 months the Board has been extremely productive—probably one of the most productive times in the Board’s history. We have released four reports on topics ranging from SSA’s information technology strategy, improving the Social Security Statement to make it more useful to workers, voicing our analysis and grave concern over the unsustainable path of the rising cost of health care, and lastly, a report which calls for the elimination of barriers that prevent or discourage older workers from continuing to work.

And we still have a full agenda. We have a variety of new projects on the drawing board, including setting up a technical panel that, every four years, reviews the assumptions and methods used by the Trustees in assessing the short-term and long-term financial prospects of the program and the Trust Funds.

#### Factors affecting applications rates

Today I want to talk to you, somewhat systematically, about the various factors that are most likely to influence how many Americans apply for SSDI and SSI today and into the future. Because I am an economist, I will emphasize the role that economic conditions and various economic incentives play in an individual’s choice to apply for benefits. While no one would choose to become disabled, and for many there is no alternative but to apply for benefits as a remaining lifeline, for others applying for benefits under the SSDI or SSI program is a choice that has costs and benefits that can be weighed and acted upon or not. Labor market conditions and the design of public policies determine in part whether applying for disability is more or less attractive than the alternatives.

As we talk about them, it is also important to think about not only *how many* people respond to these incentives and changing conditions—and how that might help the agency prepare for its future workload — but also *who* responds—and how changes in the characteristics of applicants might shape the types of cases you and your colleagues at the DDSs will face.

I will not dwell on the past legislative reforms and court decisions that have broadened the criteria for who may be considered disabled, because it is hard if not impossible to predict when future changes will occur. But I will only point out that it stands to reason that making it easier to qualify for disability benefits will increase the share of the population who will apply, increase the costs of the program, and extends its influence in the labor market decisions of workers.

Other important changes have been part of social and demographic trends for many decades. More women today work and are insured for both disability and retirement benefits. The large birth cohort known as the baby boom, born from 1946 to 1964, is entering the most disability prone years, and is making its impact felt on the retirement

and disability systems. After decades of earlier and earlier retirements, older workers, both men and women, are working longer and delaying claiming Social Security benefits.

The health and longevity of the population have steadily improved and the nature of work has changed dramatically requiring less or perhaps different forms of physical exertion. When the disability regulations were written over 50 years ago, a special provision was included for workers who had little education and had worked over 35 years in arduous unskilled jobs such as a pick-and-axe miner. Brute force back-breaking jobs are no longer common. Out of over 600,000 DDS allowances made in FY2009 through June, just over 700 cases were decided on this basis.

### Macroeconomic conditions and disability applications

The most obvious factor impacting the volume of disability applications today is the deep recession we are experiencing with its large and rapid increase in unemployment. More generally, during our recent history, the disability applications rise and fall with the unemployment rate. The DI application rate per 1000 workers among non-elderly adults rose 37% from 1989 to 1993 (from 8.3 per 1000 workers to 11.5), and by 49% from 1999 to 2003 (from 8.8 per 1000 workers to 13.1). One exception was seen from 1980 to 1984 when eligibility for disability was significantly curtailed while unemployment soared.

The logic is straightforward. In a recession with widespread unemployment, the return for looking for a new job, especially for those with fewer skills, may be low, at least temporarily, and this may be especially so for workers whose attachment to the labor force is weak or expected to be short (like those approaching traditional retirement ages). Others are eligible for unemployment insurance, but when those benefits expire, their options become more limited. A person who loses his or her job naturally begins to look for other means of economic support and if they have a medical condition that they believe can meet Social Security's definition of disability, they will increasingly turn to the DI or SSI programs. Some of those who choose to apply would have met the definition of disability in any case, but were able to earn a substantial living when jobs were more plentiful. The recession may speed up an application that might have been made later on. We should note that adverse economic conditions may also increase the likelihood that those with poor employment prospects but no good medical case may also attempt to gain access to disability benefits. Thus, the mix of applicants may be affected in an economic downturn.

One estimate suggests that for every 100 people newly unemployed there are about 7 new DI applicants (see Duggan and Imberman, 2008). Researchers have found that increases in DI applications have grown more sensitive over time to recessions, perhaps because of fundamental restructuring in the economy that provides fewer opportunities and rewards to lower skilled workers (see Autor and Duggan, 2003).

And in fact, there does seem to be a negative relationship between the increases in applications and allowance rates and the timing of recessions. For example, in fiscal year 2000 the unemployment rate was approximately 4 percent, DDSs received 2.1 million disability claims and allowed 38 percent at the initial level. By 2003, the unemployment rate was nearly 6 percent, the DDS's received 2.5 million claims and the overall initial allowance rate declined to 36.7 percent.

### The Great Recession

We have all read the newspapers and heard the stories--the nation has been going through the worst downturn in the economy since the Great Depression. And we can expect the impact on the disability system as a whole to be significant.

By the end of 2008 the Gross Domestic Product was declining at a rate of 5.4 percent per year, household net worth had fallen by 30 percent, and the country had lost 1.7 million jobs. The unemployment rate which had been below 5 percent took a sharp turn upward at the start of 2008, and ended the year at 7.2 percent. Initial disability applications increased during 2008 from 2.6 million to just shy of 3 million in fiscal year 2009.

Today, the picture for economic growth seems uncertain. The pace of job losses has slowed but unemployment continues to climb to a 26 year high of 9.8%. The proportion of working-age people who either have jobs or are actively looking for work, 65.2 percent, was at its lowest level in 22 years. More than 7 million jobs have been lost since the start of 2008.

As with most recessions, job creation lags the return of economic growth, and thus it is quite likely that the unemployment rate will continue to rise nationwide to over 10 percent before it improves. For many states, the spike in unemployment rate is even more pronounced. In June of this year 16 states had unemployment rates over 10 percent. Michigan led the pack at 15.2 percent, followed by Rhode Island, Oregon, South Carolina, Nevada, California, and Ohio. Many economists are deeply concerned about the prospects of a "jobless recovery"

### Growing Generosity of Disability Benefits

A second way that economic forces are affecting disability applications is through an interaction of the way disability and retirement benefits are calculated, as well as long-term trends in income inequality. Disability benefits, which are linked through the benefit formula to growth in average wages, have become relatively more generous over time for many workers, especially for those with low skill levels, who find themselves less in demand in today's labor market and have experienced below average wage growth over the last couple of decades. In addition, access to health insurance whether through Medicare for DI beneficiaries or Medicaid for SSI, has grown more valuable as the cost of health care has increased. Researchers have estimated that the increased generosity of benefits from these causes may account for about a quarter of the growth in the program over the past 25 years (see Duggan and Imberman, 2008).

### Increasing the Full Retirement Age

Changes in retirement policy in 1983 intended to improve the solvency of the program, namely raising the full retirement age, have the affect of encouraging a greater number of older applicants to the disability program. As the full retirement age increases, retirement benefits that are already reduced for those at the age of earliest eligibility became less and less generous, while disability benefits have remained unchanged. DI benefits for those aged 62 were 25% more attractive than retirement benefits when the full retirement age was 65. When the full retirement age increases to 66 (for those born 1943-1954), DI benefits are 33% more generous, and when it increases to age 67 (for those born in 1960 and later), DI benefits will be 43% more generous. And this increase in generosity is permanent for the life of the beneficiary and his or her spouse, not just until the normal retirement age is reached. Empirical research being conducted by academic researchers and by SSA's own Office of Policy confirms that this incentive does change behavior and makes applying for disability more likely for older workers (see Li and Maestas, 2008; and Duggan, Singleton and Song, 2007).

If at some time in the near future, efforts to reform Social Security include raising the retirement age further, or cutting retirement benefits more directly, without making adjustments to the early retirement age, or to the level of disability benefits, this incentive to claim disability benefits by older workers will grow even larger.

### What this may mean for the SSA disability workload

What does this all mean for SSA's disability workload? SSA received nearly 3 million applications during fiscal year 2009, an increase of 383,000 or 15 percent over the previous year. The increase has put extraordinary stress on the DDS system and the agency has begun to move work out of the overloaded states and into those with more capacity. Based on the economic assumptions in the President's 2010 Budget submission made in February, SSA's actuaries projected that the initial claims workload will rise to just over 3 million in 2010 and stay near the 3 million mark through 2012. Those projections, however, were based on assumptions about the severity of the recession and rise of unemployment that were far too optimistic even at that time.

By July, the President's Budget Office had revised upward by a significant amount their forecast of unemployment over the next several years. For example, by July they believed the unemployment rate for 2010 would average 9.8 percent, almost 2 percentage points higher than they thought in February. So in July, SSA's actuaries also revised their projections upward: DDS claims in 2010 would peak at a level 300,000 above their February forecast, at 3.3 million, and stay just above 3 million through 2012. Even these new forecasts may already be out-of-date--unemployment in September has already hit 9.8 percent. The result is that the projection of 3.3 million new claims next year at the DDS may well be too low.

If you have not yet felt the brunt of the impact in ODAR, it is only a matter of time. The spike in disability claims is now working its way through the DDS process and if the traditional waterfall of appeals holds true, about 45 percent of those denied at the initial level will request a reconsideration, and then approximately three-quarters of the individuals who are denied at the reconsideration level will appeal to the ALJ. It takes about 250 days, on average, for an initial claim that has been appealed to reach ODAR and then probably another year before a case is on your desk. That means, today you are looking at cases filed in the winter of 2007-08. The increase in caseloads during 2008 will not be on your desk until the coming year, and the beginning of what may be a 3 or 4 year prolonged increase will not make itself felt until the second half of next year or the beginning of 2011.

Based on the February projections, the agency expected ODAR receipts in 2010 to rise to 698,000, an increase of about 70,000 over 2009 levels, and to peak in 2011 at 736,000-- about 110,000 above the 2009 levels. By 2013, receipts at 670,000 would still be running 50,000 above current levels. There are no projections available to us based on the more pessimistic July forecast, but doing some back-of-the-envelope calculations based on the increase in DDS receipts, ODAR receipts could well be another 50,000 higher in each of the next 3 or 4 years than was believed in February. And even that estimate may turn out to be too optimistic.

So, the question becomes how will this wave of claims affect ODAR and who will be sitting across from you in the hearing room?

#### *Claimant population characteristics*

To start this analysis, we looked at the characteristics of those who received DDS decisions in the April-June quarter of 2008 before the surge in workload materialized, and then compared them to the characteristics of those who received DDS determinations as of April - June quarter of 2009. And we did this for initial claims as well as for reconsideration determinations and across the DI and SSI programs.

In looking at these age groups at the reconsideration level, we note a slight increase in the share of recon appeals from individuals under 40, in both SSDI and SSI, and a slight decline in appeals among those over 60. This may be a trend that will be worth watching and we suggest that SSA explore it further.

Some economic intuition may help explain these patterns. For those approaching the earliest age of eligibility for retirement, 62, even though disability benefits are higher than retirement benefits, proceeding with a disability appeal has an uncertain outcome and is likely to be time consuming. Claiming a certain, if lower benefit, immediately will have undoubted appeal for some.

For younger workers, the cost of appeal may be much less, because there may be few other alternatives. In general--and I know that you see this in your cases-- many of these

younger applicants have had either marginal attachment to the labor force, have few skills, perhaps worked in lower paying jobs and, as a result have been the most vulnerable to lay offs. Unable to find work, younger workers may find the disability programs attractive, and have little to lose by sticking out the appeals process. As the cost of health care increases, the attraction of entitlement to Medicaid or Medicare might make sticking it out through appeals even more attractive.

Another possible explanation is the changes by age in allowance rates that I will discuss in a minute. At this early stage, we have few answers as to how this will play out. So understanding who chooses to appeal their claims and why is an important topic for future research, one that has been largely neglected thus far.

#### *Early observations on DDS decisional outcomes*

It really is too soon to make any definitive statements about how this wave of new applicants is faring in the adjudication process. But, we have noted a few things that we believe should be studied more closely

- Overall allowance rates for adults at the initial level increased by 1 percentage point, from 37.5 to 38.5. The increase was largest for DI, at 1.6 percentage points. Allowance rates rose 0.8 percentage points for concurrent claims and 0.4 percentage points for SSI claims. Thus far, this increase seems to be unlike past recessions, when we saw decreases in allowance rates, although it is hard to make exact comparisons. Understanding the relationship between application rates and allowance rates is an important topic to which the Agency should devote some careful research.
- Allowance rates among those applying for SSDI have increased over the past year for applicants over age 40 with larger increases for older claimants: up 1.5 percentage points for 40-49 year olds, up 2.5 percentage points for those 50-59 and up 3.5 percentage points for those 60 and over. For those under age 40, however, allowance rates have fallen by about 4 percentage points.
- Allowance rates among those applying for SSDI increased for those with musculoskeletal impairments (by about 3.5 percentage points), but fell slightly for those with mental disorders. Of course, diagnoses are related to age, and indeed we find that the allowance rate for those under 40 with mental disorders fell (3.8 percentage points) while allowance rate for those over 50 with musculoskeletal impairments increased (by 4 to 5 percentage points).
- Looking at reasons for denials, we noted a small but steady increase over the last year in the number of denials issued to those under age 40 due to having only minimal impairments. This suggests that there may be a growing number of individuals applying for SSDI who, in better times, would have stayed in the labor force, but are now turning to SSDI as a last resort.

It is worth noting that the differences I am talking about within SSDI are much smaller than the differences that exist between the populations of applicants who apply for SSDI compared to those who apply for SSI. Allowance rates are about 15 percent lower for SSI applicants than for SSDI applicants, and even lower for those who have concurrent applications under both programs. This is not new and has not changed recently.

*Is there a message here for ODAR?*

Clearly, the disability adjudication data is not mature enough for any of us to draw any firm conclusions as to exactly how this recession will impact the types of cases that you will be seeing in the next few years. But I do believe we will see some interesting changes in the claimant population and there may well be affects in as-yet unexpected ways. It is important for the agency, its employees, and the policymakers to understand what factors influence claiming decisions and the decision to appeal and how the characteristics of applicants changes in response to the larger societal forces.

SSA collects a wealth of data and the Advisory Board continues to urge the agency to be more pro-active in conducting “real time” data analysis of the applicant and beneficiary populations. Not only is this analysis important for economic knowledge and future policy decisions, it can significantly improve the agency’s ability to forecast staffing and training needs, as well as service delivery options. Knowing more about whom you will be serving and where and how they would like to interact with the agency is critical for achieving success. We must harness all of our collective resources and creative imaginations. We cannot afford to fail now as the program is facing more daunting challenges than any it has faced thus far and the public is watching far more closely than it has for a long time.

Thank you for inviting me here today. On behalf of the Advisory Board, we look forward to more opportunities in the future to engage in thoughtful dialogue with the AALJ membership. And now, I’d be happy to answer your questions.



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