



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Hearing on

**Reducing the Disability Backlog at the Social Security Administration/
FY 2009 Budget Overview**

**Subcommittee on Labor, HHS, Education and Related Agencies
House Committee on Appropriations**

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**Testimony of Marty Ford
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Consortium for Citizens with Disabilities**

On Behalf of:

**American Council of the Blind
American Network of Community Options and Resources
Association of University Centers on Disabilities
Council of State Administrators of Vocational Rehabilitation
Easter Seals, Inc.
Epilepsy Foundation
Goodwill Industries International
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network
National Industries for the Blind
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
Title II Community AIDS National Network
United Cerebral Palsy
United Spinal Association**

Chairman Obey, Ranking Member Walsh, and Members of the House Appropriations Subcommittee on Labor, HHS, Education and Related Agencies, thank you for inviting me to testify at today's hearing on Reducing the Disability Backlog at the Social Security Administration/FY 2009 Budget Overview.

I am a member of the public policy team for The Arc and UCP Disability Policy Collaboration, which is a joint effort of The Arc of the United States and United Cerebral Palsy. I serve as the current Chair of the Consortium for Citizens with Disabilities (CCD), and also serve as a Co-Chair of the CCD Social Security Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

The focus of this hearing is extremely important to people with disabilities. Title II and SSI cash benefits, along with the related Medicaid and Medicare benefits, are the means of survival for millions of individuals with severe disabilities. They rely on the Social Security Administration (SSA) to promptly and fairly adjudicate their applications for disability benefits. They also rely on the agency to handle many other actions critical to their well-being including: timely payment of their monthly Title II and SSI benefits to which they are entitled; accurate withholding of Medicare Parts B and D premiums; and timely determinations on post-entitlement issues that may arise (e.g., overpayments, income issues, prompt recording of earnings).

We appreciate SSA's attention to improving services for people with disabilities within its limited resources and the agency's efforts to improve its technological capacity in ways that will help to accomplish its work. However, under the current budget situation, people with severe disabilities have experienced increasingly long delays and decreased service in accessing these critical benefits. Processing times have grown, especially at the hearing level where delays have reached intolerable levels. In some hearing offices, claimant representatives report that claimants wait more than two years to receive a hearing and decision. There are thousands of cases that have been pending 900 days or longer.

We believe that the main reason for the increase in the disability claims backlogs is that SSA has not received adequate funds to provide its mandated services. Commissioner Astrue has made reduction – and elimination – of the disability claims backlog one of his top priorities. While the current situation is dire, without adequate appropriations to fund SSA, the situation will deteriorate even more.

We are encouraged by recent Congressional efforts to provide SSA with adequate funding for its administrative budget. The Fiscal Year 2008 appropriation for SSA's Limitation on Administrative Expenses (LAE) was \$9,746,953,000. This amount was \$148 million above the President's request and was the first time in years that the agency has received at least the President's request.

While the FY 2008 appropriation will allow the agency to hire some new staff and to reduce processing times, it will not be adequate to fully restore the agency's ability to carry out its

mandated services. Between FY 2000 and 2007, Congress appropriated less than both the Commissioner of Social Security and the President requested, resulting in a total administrative budget shortfall of more than \$4 billion. The dramatic increase in the disability claims backlog coincides with this period of under-funding the agency, leaving people with severe disabilities to wait years to receive the benefits to which they are entitled.

People with severe disabilities have been bearing the brunt of the backlog crisis. Behind the numbers are individuals with disabilities whose lives have unraveled while waiting for decisions – families are torn apart; homes are lost; medical conditions deteriorate; once stable financial security crumbles; and many individuals die. Numerous recent media reports across the country have documented the suffering experienced by these individuals. Access to other key services, such as reporting that a check has not been received or promptly recording earnings, also has been diminished. Local SSA field offices have been threatened with closing or having their hours open to the public reduced. Despite dramatically increased workloads, staffing levels throughout the agency are at the lowest level since 1974 when SSI payments began.

The President's request for the SSA FY 2009 LAE is encouraging, but does not go far enough to put the agency on a clear path to provide its mandated services at a level expected by the American public. In order for SSA to meet its responsibilities, we estimate that the agency needs a minimum of \$11.0 billion for its FY 2009 administrative budget. This amount will allow the agency to not only significantly reduce the backlog, but also keep local offices open, provide adequate telephone services to the public, and maintain the integrity of its programs by performing more continuing disability reviews and SSI redeterminations. We also recommend that SSA's LAE budget authority be removed from the Section 302(a) and (b) allocations for discretionary spending.

In my testimony today, I will discuss (1) the impact on people with disabilities of insufficient funding for SSA's administrative budget and (2) ways that SSA can reduce the backlog of disability claims and improve the disability claims process.

I. The Impact on People with Disabilities of Insufficient Funding for SSA's Administrative Budget

Other witnesses today will address the current state of SSA's inadequate level of resources. However, we must recognize the real-life impact of the backlog and the ensuing delays for individuals with disabilities who must file claims for disability benefits and wait for a decision. Over the past year, there have been numerous media stories both national and local in newspapers, on the radio, and on television, which have documented the suffering experienced by these individuals. For example, a December 2007 New York Times front-page article¹ told several compelling stories:

¹ "Disability Cases Last Longer as Backlog Rises," by Erik Eckholm, *New York Times*, Dec. 10, 2007.

- A North Carolina woman had a hearing three years after her initial application was denied. She used an oxygen tank 24 hours a day because of emphysema and sleep apnea. She had lost her apartment and slept on her daughter's sofa or at a friend's house.
- A North Carolina man's application was denied in 2003 despite severe diabetes and numerous hospital records and doctors' opinions. His parents went into debt because of his medical bills and nearly lost their home. They obtained a lawyer to represent their son who still had to wait two years for a hearing. The parents were notified that their son, fearing another rejection, committed suicide, just two hours after his attorney called to say that the administrative law judge had approved the claim without the need for a hearing.

There are many other similar stories across the country. Testimony presented in Congress last year by a CCD-member organization² described circumstances facing a sampling of claimants and demonstrates in human terms the terrible impact of the delays and the crises facing claimants every day:

- An Alabama man, a former welder, had a stroke when he was only 48 years old. While waiting 18 months for his hearing, he cashed in all of his savings bonds and his health deteriorated. He had to move in with his elderly mother who had lung cancer. He had no means of support after she died and his brother lost his job after he had to move to Alabama to help out.
- An Arizona father of six, a former construction worker, watched his wife develop a substance abuse problem because of their financial problems. This family had a history with delays – the claimant's father died after suffering a heart attack caused in part by delays in processing his own disability claim.
- A former cook and professional musician in Idaho with cancer pawned his belongings to survive while waiting for his hearing. Without health insurance, he was not able to receive consistent medical care for his cancer.
- To survive while waiting for a hearing decision, an Iowa woman cashed out her work pension plan, paying early withdrawal penalties. She borrowed money and took out a lien on her car. She received inadequate medical care because she had no medical insurance.
- A veteran in Kansas has been unable to pay the rent for his VA transitional program and became homeless.
- In Kentucky, a single father of five (his wife committed suicide) with heart problems and other conditions had to give up a promising heart treatment when he lost his medical insurance while waiting for a hearing.
- A Maine father became homeless with his wife and two children while waiting for a hearing. After eviction, the family could not stay in a shelter because of the children and they lived in his car.
- A Massachusetts mother of two young daughters lived in a shelter after leaving an abusive domestic situation. Her hearing request, filed in January 2006, was lost and logged in 15 months later in April 2007 when she obtained an attorney.

² Testimony of Nancy G. Shor, Executive Director, National Organization of Social Security Claimants' Representatives (NOSSCR), before the House Ways and Means Social Security Subcommittee, "Hearing on the Social Security Administration Disability Claims Backlogs," February 14, 2007, and before the Senate Finance Committee, "Hearing on Funding Social Security's Administrative Costs: Will the Budget Meet the Mission?," May 23, 2007. NOSSCR is a member of the CCD Social Security Task Force.

- A woman in Montana lived in an 8 foot by 20 foot building, with no plumbing. She previously lived in a mold-infested trailer without running water, a bathroom, or cooking facilities. She had no insurance and was unable to pay her doctor for four years.
- A New Mexico father of four with leukemia, who is a former pipeline inspector, filed for bankruptcy because his wife's income could not support the family.
- A New York mother, a former State employee, was evicted and lost custody of her children when she could not provide a home for them. She lived in a homeless shelter for four months. Her depression, which worsened due to stress, resulted in a hospitalization.
- A former tugboat captain in North Carolina had no insurance and could not obtain surgery for his back. A request to expedite his hearing to avoid foreclosure was denied. He lost his home, forcing him to move in with his elderly and ailing mother.
- Even though a man in North Dakota had a rare form of a brain tumor and failing kidneys, his claim was denied and he filed an appeal. He and his wife had financial problems paying for his medications and medical bills and they applied for heating assistance.
- An Ohio man with diabetes requires multiple surgeries because of an open stomach wound. He lost his apartment and moved in with a friend, which was detrimental to his wound because he required a very clean environment.
- An Oregon man died in June 2005 at age 41 because of heart disease. He was homeless and moved frequently. His hearing, requested in 2004, was held in 2007, long after his death.
- A Pennsylvania woman spent all of her savings and had to apply for welfare. Her house went to foreclosure but was saved by her fiancé. He had cancer and a poor prognosis and she worried that without him, she would lose her house and become homeless.
- The file of a Rhode Island resident sat in the SSA district office for more than two years after a hearing was requested in 2004. The hearing office returned the request to the SSA district office because it did not have a claims folder attached. The hearing request and folder were finally sent to the hearing office in January 2007, after an attorney became involved.
- A Texas woman, a former broker who has a Master's Degree, lost her income and health insurance after filing for benefits. She also lost her home and has exhausted her savings to pay for medical care. After living with friends, she went to live with her elderly parents.
- While his hearing was pending, a Washington veteran became homeless and lived at a local mission. Before becoming disabled, he successfully sold cars. Upon leaving his hearing, his attorney drove him to the mission to pick up a paper bag with all of his possessions and then drove him to the local VA hospital for in-patient medical treatment.
- A long-time municipal government employee in West Virginia was having serious financial problems. He has received eviction notices, which had been forwarded to the hearing office but no response had been received.

If we were to ask claimant representatives to provide up-to-date information on their current caseloads, we would see similar heart-wrenching stories of people's lives in financial ruin and chaos. What do these real-life stories about individuals caught in the process tell us about the current situation at SSA?

1. Processing times have reached intolerable levels.

The average processing time for cases at the hearing level has increased dramatically since 2000, when the average time was 274 days.³ In the current fiscal year, SSA estimates that the average processing time for disability claims at the hearing level will be 535 days,⁴ nearly twice as long as in 2000. It is important to keep in mind that this is an “average” and that many claimants will wait longer. In addition, the average processing times at the initial and reconsideration levels have grown over the last ten years by about 20 days at each level, with some cases taking much longer.⁵

The current processing times in some hearing offices are striking, and much longer than the 535 days targeted by SSA in FY 2008. SSA statistics from December 2007 for its 144 hearing offices⁶ indicate that the average processing time at 43 hearing offices is above the projected average processing time. There is wide fluctuation, with some offices over 700 days. And even in those hearing offices below the average processing time, it is important to keep in mind that there will be many cases above the average and each of those cases represents an individual with disabilities who must wait for critical cash and medical insurance benefits.

SSA has worked hard over the last year to reduce the number of “aged cases” at the hearing level. During FY 2007, there were more than 60,000 cases that would have been pending 1,000 days or longer by the end of FY 2007. The SSA Office of Disability Adjudication and Review (ODAR) dramatically reduced this number to 108 cases at the end of FY 2007 and is now focusing on cases that have been pending 900 days or longer. There is still much work to be done since there were more than 135,000 cases pending 900 days or longer – nearly two and one-half years – at the beginning of FY 2008.⁷

The impact of the budget and staffing cuts in district offices also affect the processing times at the hearing levels. Representatives have reported that cases are sitting longer in district offices after requests for hearings are filed, often adding months – or years – to the processing time. In a case described above from Providence, RI, a claimant was still waiting in 2007 for an ALJ hearing where the request for hearing was filed by the claimant *pro se* in 2004. The request was timely sent to the hearing office but without the claims folder. The hearing office returned the file to the SSA district office, where the case sat for **more than two years**. The hearing request and folder were finally sent to the hearing office in January 2007 after an attorney became involved in the case and started to track what happened. The hearing office scheduled the case for an expedited hearing in view of the more than two year delay.

2. The number of pending cases continues to increase.

³ *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, GAO-08-40 (Dec. 2007)(“GAO Report”), p. 22.

⁴ *Social Security Administration: Fiscal Year 2009 Justification of Estimates for Appropriations Committees* (“SSA FY 09 Budget Justification”), p. 6.

⁵ GAO Report, p. 20.

⁶ “National Ranking Report by Average Processing Time” for the month ending 12/28/2007.

⁷ *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence: End of Year Report, Fiscal Year 2007*, SSA Office of Disability Adjudication and Review (“ODAR Report”), p. 3. Available at: http://www.ssa.gov/appeals/annual2007_12_7.pdf.

In a recent report, the Government Accountability Office (GAO) noted that the hearing level backlog was “almost eliminated” from FY 1997 to FY 1999, but then grew “unabated” by FY 2006.⁸ The number of pending cases at the hearing level reached a low in FY 1999 at 311,958 cases. The numbers have increased dramatically since 1999, reaching 752,000 in FY 2008.⁹

However, even for hearing offices with a lower number of pending cases, the numbers do not tell the whole story. Because of the disparities between hearing offices, many claimant representatives have reported that SSA has been transferring cases from offices with high numbers of pending cases to offices with lower numbers where the hearings are held by video conference, if the claimant agrees. While this is understandable in a national program, it nevertheless means that claimants who live near hearing offices with lower numbers of pending cases will end up waiting longer.

3. Staffing levels have decreased which means a decrease in service.

Representatives have noted the loss of Administrative Law Judges (ALJs) and support staff in hearing offices around the country. Former Commissioner Barnhart had planned to hire an additional 100 ALJs in FY 2006 but due to cuts in the President’s budget request, she was able to hire only 43. The real impact of the burden on the current ALJ corps can be seen by comparing statistics from 1998 and 2006. In FY 1998, there were 1,087 ALJs available to conduct hearings. This number dropped to 1,018 in FY 2006, while the number of pending cases more than doubled.¹⁰

Whether there are an adequate number of ALJs may not even be the primary staffing issue in hearing offices. According to the GAO: “By the close of fiscal year 2006, SSA saw the highest level of backlogged claims and the lowest ratio of support staff over this period [FY 1997 to FY 2006].”¹¹ Productivity is not related solely to the number of ALJs, but also to the number of support staff. In 2006, the actual ratio of support staff to ALJs was 4.12. SSA senior managers and ALJs recommend a staffing ratio of 5.25.¹² The actual ratio represented a significant decrease, about 25 percent, from the recommended level, at a time when the number of pending cases had increased dramatically. It is also important to note that the number of pending cases older than 270 days was much lower when the support staff to ALJ ratio was higher (FY 1999 to FY 2001).¹³

The SSA LAE appropriation for FY 2008 will allow the Commissioner to hire 150 new ALJs and some additional staff. We are encouraged that his goal is to reach a level of 1250 ALJs by early FY 2009. However, sufficient funding to maintain an adequate number of ALJs and support staff is necessary in FY 2009 and future years to continue reducing the backlog.

4. Impact on service provided in SSA field offices.

⁸ GAO Report, p. 20.

⁹ SSA FY 09 Budget Justification, p. 6.

¹⁰ GAO Report, p. 31.

¹¹ GAO Report, p. 32.

¹² *Id.*

¹³ *Id.*

Under the current budget situation, people with severe disabilities have experienced long delays and decreased services provided in SSA field offices, which do not have adequate resources to meet all of their current responsibilities. “Over the past decade, the growth in the disability claims backlogs has coincided with a period of staff turnover and losses throughout the disability claims process.”¹⁴ SSA staffing levels are at the lowest level since the SSI program began making payments in 1974.

- **Impact on disability claims.** Under the current SSA budget situation, we are concerned that delays will grow not only at the hearing level but also at the initial and reconsideration levels. A recent action taken by SSA demonstrates the scope of the problem. In June 2006, SSA was forced to direct all available resources to the processing of initial applications, and away from processing reconsideration level cases, when the initial application backlog became too high. The decision to redirect resources was caused primarily by the cut in the President’s request for fiscal year 2006. In some states, this meant that reconsideration cases were not processed or were temporarily stopped,¹⁵ unless the claimant knew to notify the state agency of “dire circumstances.”

- **Impact on post-entitlement work.** The accumulated staffing reductions have already translated into SSA’s inability to perform post-entitlement work. Not surprisingly, with millions of new applications filed each year, SSA emphasizes the importance of processing applications, determining eligibility, and providing benefits. Once a person begins to receive monthly benefits, there are many reasons why SSA may need to respond to contacts from the person or to initiate a contact, known as “post-entitlement work.” Generally, this workload does not receive the priority it should. Frequently, when SSA is short on staff and local offices are overwhelmed by incoming applications and inquiries, agency workers are necessarily less attentive to post-entitlement issues. For people with disabilities, this can discourage efforts to return to work, undermining an important national goal of assisting people with disabilities to secure and maintain employment.

One key example of post-entitlement work that has fallen by the wayside in the past is the processing of earnings reports filed by people with disabilities. Typically, the individual calls SSA and reports work and earnings or brings the information into an SSA field office, but SSA fails to input the information into its computer system and does not make the needed adjustments in the person’s benefits. Years later, after a computer match with earnings records, SSA notices the person was overpaid, sometimes tens of thousands of dollars, and sends an overpayment notice to this effect to the beneficiary. These are situations where the individual is clearly not at fault. However, all too often, after receiving the overpayment notice, the beneficiary will tell SSA that he or she reported the income as required and SSA will reply that it has no record of the reports.

When this occurs, it may result in complete loss of cash benefits (Title II benefits) or a reduction in cash assistance (SSI). It also can affect the person’s health care coverage. To collect the overpayment, SSA may decide to withhold all or a portion of any current benefits owed, or SSA

¹⁴ GAO Report, p. 30.

¹⁵ See GAO Report, p. 18.

may demand repayment from the beneficiary if the person is not currently eligible for benefits. Not surprisingly, many individuals with disabilities are wary of attempting to return to work, out of fear that this may give rise to the overpayment scenario and result in a loss of economic stability and potentially of health care coverage upon which they rely. As a result of this long-term administrative problem, anecdotal evidence indicates that there is a widespread belief among people with disabilities that it is too risky to even attempt a return to work, because the beneficiary may end up in a frightening bureaucratic morass of overpayment notices, demands for repayment, and benefit termination.

- **Impact on performing continuing disability reviews (CDRs) and SSI redeterminations.**

The processing of CDRs and SSI redeterminations is necessary to protect program integrity and avert improper payments. Failure to conduct the full complement of CDRs would have adverse consequences for the federal budget and the deficit. According to SSA, CDRs result in \$10 of program savings and SSI redeterminations result in \$7 of program savings for each \$1 spent in administrative costs for the reviews.¹⁶ However, the number of reviews actually conducted is directly related to whether SSA receives the necessary funds. For example, the number of CDR reviews in 2006 was reduced by more than 50%, due to the lower level of appropriations. Even though the great majority of CDRs result in continuation of benefits, the savings from those CDRs that result in terminations are substantial because of the size of the program and the value of the benefits provided.

- **New caseloads are added without providing the funds to implement these provisions.**

Over the past decade, Congress has passed legislation that added to SSA's workload, but did not necessarily provide additional funds to implement these provisions. Recent examples include:

- Conducting pre-effectuation reviews on increasing numbers of initial SSI disability allowances. SSA must review these cases for accuracy prior to issuing the decision.
- Changing how SSI retroactive benefits are to be paid. SSA must issue these benefits in installments if the amount is equal to or more than three months of benefits. The first two installments can be no more than three months of benefits each, unless the beneficiary shows a hardship due to certain debts. Many more cases need to be addressed because under prior law, the provision was triggered only if the past due benefits equaled 12 months or more. With the trigger at three months, it is likely that many more beneficiaries ask SSA to make a special determination to issue a larger first or second installment.
- New SSA Medicare workloads. SSA has new workloads related to the Medicare Part D prescription drug program, including determining eligibility for low-income subsidies, processing subsidy changing events for current beneficiaries, conducting eligibility redeterminations, and performing premium withholding. And beginning in FY 2007, SSA must make annual income-related premium adjustment amount determinations for all current Medicare beneficiaries for the Medicare Part B premium for higher income beneficiaries. SSA also makes the determinations for new Part B applicants.

¹⁶ SSA FY 09 Budget Justification, p. 18.

We were encouraged that in the recent Economic Stimulus Act of 2008,¹⁷ Congress recognized the added work that SSA will incur as a result of the legislation and appropriated an additional \$31 million to the agency for FY 2008.

Our recommendations regarding SSA funding. SSA must be given enough funding to make disability decisions in a timely manner and to carry out other critical workloads. Due to the serious consequences of continued funding of SSA's administrative expenses at inadequate levels, we strongly recommend that SSA receive \$11 billion for its FY 2009 LAE. This amount will allow the agency to make significant strides in reducing the disability claims backlog, improving other services to the public, and conducting adequate numbers of CDRs and SSI redeterminations.

In addition, we also urge you to separate SSA's LAE budget authority from the Section 302(a) and (b) allocations for discretionary spending. The size of SSA's LAE is driven by the number of administrative functions it conducts to serve beneficiaries and applicants. The funds for Title II LAE are ultimately paid out of the Social Security Trust Funds and general revenues reimburse the Trust Funds for LAE costs associated with the Supplemental Security Income (SSI) program. There is a simple solution to SSA's escalating funding crisis. Congress can remove SSA's administrative functions from the discretionary budget that supports other important programs. SSA's LAE would still be subject to the annual appropriations process and Congressional oversight.

II. OTHER RECOMMENDATIONS FOR IMPROVING THE DISABILITY CLAIMS PROCESS

In addition to SSA's budget needs, the CCD Social Security Task Force has additional suggestions for improving the disability claims process for people with disabilities. Many of these recommendations have already been initiated by SSA.¹⁸ We believe that these recommendations and agency initiatives, which overall are not controversial and which we support, can go a long way towards reducing and eventually eliminating the disability claims backlog.

1. Improve development of evidence earlier in the process.

For many years, CCD has supported full development of the record at the beginning of the claim so that the correct decision can be made at the earliest point possible and unnecessary appeals can be avoided. Changes at the front end of the process can have a significant beneficial impact on preventing the backlog and delays later in the appeals process. Emphasis on improving the

¹⁷ Pub. L. No. 110-185.

¹⁸ Commissioner Astrue announced a number of initiatives to eliminate the SSA hearings backlog at a Senate Finance Committee hearing on May 23, 2007. The 18-page summary of his recommendations is available at www.senate.gov/~finance/sitepages/hearing052307.htm. An update on the status of the recommendations/initiatives is the subject of the *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence: End of Year Report, Fiscal Year 2007*, SSA Office of Disability Adjudication and Review ("ODAR Report").

front end of the process is appropriate and warranted, since the vast majority of all claims allowed are approved at the initial levels. Such changes also will benefit the significant percentage of claimants denied at the initial level who would meet the SSA disability criteria if their cases were properly developed but who abandon their claims and do not appeal.

Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. The adjudicator needs to review a wide variety of evidence in a typical case, including: medical records of treatment; opinions from medical sources and other treating sources, such as social workers and therapists; records of prescribed medications; statements from former employers; and vocational assessments. The adjudicator needs these types of information to make the necessary findings and determinations under the SSA disability criteria.

The key to a successful disability determination process is having an adequate documentation base and properly evaluating the documentation that is obtained. Often, claimants are denied **not** because the evidence establishes that the person **is not disabled**, but because the limited evidence gathered cannot establish that the person **is disabled**. Unless claims are better developed at earlier levels, proposed procedural changes will not improve the disability determination process. Unfortunately, very often the files that denied claimants bring to claimant representatives show that inadequate development was done at the initial and reconsideration levels by the state agencies. Until this lack of evidentiary development is addressed, the correct decision on the claim cannot be made.

Claimants should be encouraged to submit evidence as early as possible. However, the fact that early submission of evidence does not occur more frequently is usually due to many legitimate reasons beyond the claimant's control, including:

- State agency disability examiners who fail to request and obtain necessary and relevant evidence, including the failure to request specific information tailored to the SSA disability criteria;
- The failure of SSA and state agency disability examiners to explain to claimants or providers what evidence is important, necessary, and relevant for adjudication of the claim;
- Cost or access restrictions, including confusion over Health Insurance Portability and Accountability Act (HIPAA) requirements, prevent claimants from obtaining records;
- Medical providers who delay or refuse to submit evidence;
- Inadequate reimbursement rates for providers; and
- Evidence which is submitted but then misplaced.

A properly developed file is usually before the ALJ at the hearing level because the claimant's representative has obtained evidence or because the ALJ has developed the claim. Not surprisingly, different evidentiary records at different levels can easily produce different results on the issue of disability. To address this, the agency needs to emphasize the full development of the record at the beginning of the claim.

We have a number of recommendations¹⁹ that we believe will improve the development process:

- **Provide more assistance to claimants at the application level.** At the beginning of the process, SSA should explain to the claimant what evidence is important and necessary. SSA should also provide applicants with more help completing application paperwork so that all impairments and sources of information are identified, including non-physician and other professional sources, in addition to physicians.
- **DDSs need to obtain necessary and relevant evidence.** Representatives often are able to obtain better medical information because they use letters and forms that ask questions relevant to the disability determination process. DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. DDSs should update and improve their forms to specifically request necessary information. This should include collecting functional capacity information, which is generally obtained at the ALJ hearing level but less so at the initial levels. In addition, SSA has created some national forms to collect evidence, but they vary in quality. The situation is further complicated because some DDSs use their own forms, which also vary in quality. SSA should review its own national forms and DDS forms that are used to collect evidence, and set standards for state-specific forms to ensure higher quality.

The same effort should be made with non-physician sources (therapists, social workers) who see the claimant more frequently than the treating doctor and have a more thorough knowledge of the individual's limitations.

It also should be emphasized that all of these sources should be contacted for clarification to ensure that information is not misconstrued and that decisions are not made on apparent inconsistencies, when in fact, none exist.

- **Increase reimbursement rates for providers.** To improve provider response rates to requests for records, appropriate reimbursement rates for medical records and reports need to be implemented. This also will help to improve the medical expertise available to adjudicators for consultative examinations and for medical experts.
- **Provide better explanations to medical providers.** SSA and DDSs should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and ask for evidence relevant to the standard.
- **Provide more training and guidance to adjudicators.** Many cases that reach the appeals levels are reversed due to erroneous application of existing SSA policy. Additional training should be provided on important evaluation rules such as the rules for: weighing medical

¹⁹ Our recommendations include those made by Linda Landry, Disability Law Center, Boston, MA, at the SSA "Compassionate Allowance Outreach Hearing for Rare Diseases" held in Washington, DC, on December 4, 2007. Her testimony is available online at: <http://www.ssa.gov/compassionateallowances/LandryFinalCompassionateAllowances2.pdf>.

evidence, including treating source opinions; the role of non-physician evidence²⁰; the evaluation of mental impairments, pain, and other subjective symptoms; the evaluation of childhood disability; and the use of the Social Security Rulings, which provide very useful guidance in many areas of disability evaluation and are to be followed by all disability adjudicators.

- **Improve use of the existing methods of expediting disability determinations.** SSA already has in place a number of methods, often under-utilized, which can expedite a favorable disability decision if the appropriate criteria are met. These include: “Quick Disability Determinations,” Presumptive Disability in SSI cases, and terminal illness (“TERI”) cases.
- **Improve the quality of consultative examinations.** In addition to increasing reimbursement rates, steps should be taken to improve the quality of the consultative examination (CE) process. There are far too many stories about inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant’s. This is wasted money for SSA and unhelpful to individuals, especially those who with low incomes, who do not have complete medical records documenting their conditions and who need a high quality CE report to help establish their eligibility. The regulations allow SSA to pay treating physicians to provide CEs, but they are rarely used in that capacity. SSA should explore ways to expand use of treating physicians to provide this information. Also, to ensure that its funds are being used as effectively and appropriately as possible, SSA should provide more oversight of the CE process, which is conducted by the state agencies.

Is there a “culture of denial” at the early levels of the process? Recent media reports have raised the issue of whether a “culture of denial” exists at the initial and reconsideration levels of the disability claims process because of the high denial rate at those levels, while a majority of cases appealed to the ALJ hearing level are allowed. We do not know of any specific written documents that encourage denials at the earlier levels, but there are several reasons, in addition to the high denial rate, why there is a perception that a “culture of denial” exists.

By law, SSA must review at least 50 percent of all favorable disability determinations made by the state agencies.²¹ However, there is no similar requirement for the review of denials. As a result, state agency disability examiners know that they will receive more review – and possible feedback – if they allow a claim, but not if it is denied. A key question is whether this process influences or makes it easier for a disability examiner to deny – rather than allow – a claim.

In addition, the state agencies are held to “standards of performance,” by which SSA measures their compliance with SSA regulations and policy.²² The “standards of performance” include processing time standards.²³ Because of the processing time levels, we believe that the state agencies are under pressure to cut short efforts to obtain medical information and to make decisions on cases with incomplete records.

²⁰ This evidence is often given little or no weight even though SSA’s regulations provide that once an impairment is medically established, all types of probative evidence, e.g., medical, non-physician medical, or lay evidence, will be considered to determine the severity of the limitations imposed by the impairment(s).

²¹ Sections 221(c)(3)(A)[Title II] and 1633(e)(2)(A)[SSI] of the Social Security Act.

²² 20 C.F.R. §§ 404.1640 to 404.1643.

²³ *Id.* § 404.1642.

Finally, there is great variation in allowance/denial levels among the state agencies. There are a number of legitimate factors for this variation, but it is possible that the “culture” in certain state agencies could lead to a higher level of denials. This is an area that should be more closely examined.

The above factors, alone or in combination, should be examined to determine whether they produce a leaning toward denial of cases at this initial stage in the review process.

In the Commissioner’s May 2007 backlog elimination initiatives, there are two efforts that relate to the issue of reconsideration denials. SSA’s Office of Quality Performance is reviewing 14,000 reconsideration denials, drawn at random over a one-year period from 15 state agencies that have low accuracy rates. The review began in September 2007 and will continue during FY 2008. The purpose of the initiative is to detect and correct erroneous reconsideration decisions, to make recommendations for addressing identified problems, and to eventually reduce the number of hearing-level appeals.²⁴ The results of this initiative will be informative.

Under another initiative, cases have been informally remanded to DDSs based on “scoring profiles” from the Office of Quality Performance. DDSs agreed to review about 20,000 paper cases and SSA estimated that approximately 20% of the cases would be allowed. The allowance rate has actually been much higher – about 54%. In FY 2008, SSA plans to send a total of 51,000 cases to the DDSs, with an estimated 10% allowance rate. If the DDS does not issue a favorable decision, the cases return to ODAR with more development and move to the front of the queue for scheduling.²⁵

2. Expand technological improvements.

Commissioner Astrue has made a strong commitment to improve and expand the technology used in the disability determination process. CCD generally supports SSA’s technological initiatives to improve the disability claims process, so long as they do not infringe on claimants’ rights. Many of these improvements will not only reduce delays, but also provide better service to the public, and do not require fundamental changes to the process. The initiative to process disability claims electronically has the prospect of significantly reducing delays by eliminating lost files, reducing the time that files spend in transit, and preventing misfiled evidence. Some of the technological improvements that we believe can help reduce the backlog include the following:

- **The electronic disability folder: “eDIB.”** The Commissioner is moving forward with development of the electronic disability folder, “eDIB.”²⁶ The electronic folder should reduce delays caused by the moving and handing-off of folders, allowing for immediate access by whichever component of SSA or DDS is working on the claim.

²⁴ ODAR Report, p. 10.

²⁵ ODAR Report, p. 4.

²⁶ ODAR Report, p. 6.

- **Electronic Records Express (ERE).** ERE is an initiative to increase the use of electronic options for submitting records related to disability claims that have electronic folders. Currently, registered claimant representatives are able to submit evidence electronically through the SSA secure website or to a dedicated fax number. The representative is given a barcode for the claim and the information in the barcode directs the information submitted to the claimant's unique electronic disability folder.

SSA plans to expand use of ERE to allow representatives the ability to view the electronic folder online and to receive notices electronically. A pilot is targeted to begin in June 2008.²⁷ Claimant representatives are very supportive of this expansion, as it will allow them to view the folder as soon as representation is obtained and will allow them to determine what additional evidence is needed in the claim or if submitted evidence is missing. Currently, claimant representatives receive CDs of files at different stages while cases are pending at the hearing level or they can request a CD from the SSA field office. However, requesting CDs causes more work for SSA workers and can lead to delays until they are received. Direct access to the secure website will eliminate both of these issues.

SSA also is working to allow the filing of appeals over the Internet.

- **Findings Integrated Templates (“FIT”).** FIT is used for ALJ decisions and integrates the ALJ's findings of fact into the body of the decision. It is a “smart” decision-writing process, i.e., while it does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision. The vast majority of ALJs are now using FIT to write their decisions. FIT is available to the public on SSA's website²⁸ and claimant representatives can use FIT to draft favorable decisions for ALJs. SSA is encouraging ALJs to accept draft decisions from representatives. Claimant representatives have reported problems with downloading FIT from the public website. These concerns have been relayed to SSA and we are hopeful that they will be resolved in the near future.

- **Use of video hearings.** The Commissioner is expanding the use of video hearings at the ALJ level. This allows ALJs to conduct hearings without being at the same geographical site as the claimant and representative and has the potential to reduce processing times and increase productivity. Claimant representatives have participated in hearings around the country and have reported a mixed experience, depending on the benefit for claimants, the quality of the equipment used, and the hearing room set-up.

We support the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected; the quality of video teleconference hearings is assured; and the claimant retains the absolute right to have an in-person hearing as provided under current regulations.²⁹

3. New screening initiatives.

²⁷ ODAR Report, p. 7.

²⁸ FIT can be downloaded from www.ssa.gov/appeals/fit.

²⁹ 20 C.F.R. §§ 404.936 and 416.1436.

We support efforts by SSA to accelerate the receipt of benefits for individuals with disabilities and support the agency's desire to develop new mechanisms to expand the population of claimants who may qualify for expedited eligibility throughout the application and review process. Ideally, adjudicators should use SSA screening criteria as early as possible in the process. However, we also encourage the use of ongoing screening as claimants obtain more documentation to support their applications.

Although we support expedited screening mechanisms, we urge caution so that any new eligibility criteria do not create unintended consequences for individuals who may qualify later in the process. In other words, we do not support any expedited screening process that may eliminate the ability of applicants to continue through the full sequential evaluation. For some claimants, a medical diagnosis may provide the objective evidence of their impairment. However, we express concern about any approach that may either inadvertently diminish the significance of functional evidence or overlook the substantial obstacles that a very large number of individuals face to obtain medical evidence to support their claims. In addition, SSA must work to ensure that there is no negative inference when a claim is not selected by the screening tool or allowed at that initial evaluation.

There are two initiatives that hold promise:

- **Quick Disability Determinations.** We have supported the Quick Disability Determination (QDD) process since it first began in SSA Region I states in August 2006 and was expanded nationwide by Commissioner Astrue in September 2007.³⁰ Under QDD, a computer screening tool identifies initial claims with a high likelihood of a favorable disability determination. The QDD process has the potential of providing a prompt disability decision to those claimants who are the most severely disabled. Since the QDD process's August 2006 implementation in Region I states, the initial QDD results have been very positive. In particular, we are impressed that the vast majority of QDD cases have been decided favorably in less than 20 days. Currently, the majority of cases referred for QDD processing involve cancer. However, Commissioner Astrue intends to expand the number and types of cases referred to the QDD process and we support this expansion.
- **“Compassionate allowances.”** In July 2007, SSA published an Advance Notice of Proposed Rulemaking (ANPRM) on a proposed new screening mechanism for disability determinations to be known as “Compassionate Allowances.”³¹ According to the ANPRM, SSA is “investigating methods of making ‘compassionate allowances’ by quickly identifying individuals with obvious disabilities.” While there is no definition of disabilities that are considered “obvious,” there is emphasis on creating “an extensive list of impairments that we [SSA] can allow quickly with minimal objective medical evidence that is based on clinical signs or laboratory findings or a combination of both....” Like the QDD process, SSA is looking at the use of computer software to screen cases by searching claims for key words in the electronic folder. An outreach hearing was held on December 4 and 5, 2007, regarding this initiative.³² We understand that additional hearings will be held.

³⁰ 20 C.F.R. §§ 404.1619 and 416.1019.

³¹ 72 Fed. Reg. 41649 (July 31, 2007).

³² For more information, see www.ssa.gov/compassionateallowances.

The CCD Social Security Task Force submitted comments to the ANPRM and we are generally supportive of this initiative so long as it does not eliminate the ability of applicants to continue through the full disability evaluation process. While recognizing that it is a laudable goal to expedite eligibility for individuals with terminal illnesses or other very serious conditions, we do not support a screening method that may create unintended consequences for individuals who do not meet the objective screening criteria and must collect documentation of their functional limitations.

In our comments to the ANPRM, we also made a number of specific recommendations for screening mechanisms including:

- A broader screening mechanism that goes beyond the existing “terminal illness” (TERI) process to include a wider range of claimants and publish criteria in the regulations;
- A preliminary, nonexhaustive list of impairments – affecting both children and adults – to consider for the new screening process;
- Strengthening SSA rules regarding the evaluation and weighing of VA disability ratings for veterans who apply for Title II or SSI disability benefits; and
- Applying the new expedited screening mechanism throughout the application and review process when file evidence indicates the claimant meets the criteria.

4. Other hearing level improvements.

- **The Senior Attorney Program.** In the 1990s, as an initiative to reduce the backlog of cases at hearing offices, senior staff attorneys were given the authority to issue fully favorable decisions in cases that could be decided without a hearing (i.e. “on the record”). This program was well received by claimants’ representatives because it presented an opportunity to present a case and obtain a favorable result efficiently and promptly. And, of most importance, thousands of claimants benefited. While the Senior Attorney Program existed, it helped to reduce the backlog by issuing approximately 200,000 decisions. The initiative was phased out in 2000, just about the same time that the backlog began to increase.

We are pleased that Commissioner Astrue has decided to reinstate the program for at least the next two years³³ and has proceeded with its implementation.³⁴ We believe that this initiative will help to reduce the backlog of cases at the hearing level as the prior program did during the 1990’s.

- **Increasing the time for providing notice of hearings.** Current regulations in most of the country provide only a 20-day advance notice for ALJ hearings. This time period is not adequate for requesting, receiving, and submitting the most recent and up-to-date medical evidence prior to the hearing. Some hearing offices, but not on a nationwide basis, do provide much longer

³³ The interim final rule reinstating the program was published in August 2007 and became effective on October 9, 2007. 72 Fed. Reg. 44763 (Aug. 9, 2007).

³⁴ ODAR Report, p. 3.

advance notice, some as long as 90 days. In SSA Region I states under the “Disability Service Improvement (DSI)” process, the time has been increased to 75 days, with the goal of providing adequate time to obtain new evidence (although, there is no requirement that providers, such as medical offices and hospitals, submit evidence within that time period).

SSA has proposed to expand the 75-day hearing notice requirement nationwide.³⁵ We strongly support this proposed change. This increased time period will mean that many more cases would be fully developed prior to the hearing and lead to more on the record decisions, avoiding the need for a hearing.

Caution regarding the search for efficiencies. While we generally support the goal of achieving increased efficiency throughout the adjudicatory process, we caution that limits must be placed on the goal of administrative efficiency for efficiency’s sake. The purpose of the Social Security and SSI programs are to provide cash benefits to those who need them and have earned them and who meet the eligibility criteria. While there may be ways to improve the decision-making process from the perspective of the adjudicators, the bottom line evaluation must be how the process affects the very claimants and beneficiaries for whom the system exists.

People who find they cannot work at a sustained and substantial level are faced with a myriad of personal, family, and financial circumstances that will have an impact on how well or efficiently they can maneuver the complex system for determining eligibility. Many will not be successful in addressing all of SSA’s requirements for proving eligibility until they reach a point where they request the assistance of an experienced representative. Many face educational barriers and/or significant barriers inherent in the disability itself that prevent them from understanding their role in the adjudicatory process and from efficiently and effectively assisting in gathering evidence. Still others are faced with having no “medical home” to call upon for assistance in submitting evidence, given their lack of health insurance over the course of many years. Many are experiencing extreme hardship from the loss of earned income, often living through the break-up of their family and/or becoming homeless, with few resources - financial, emotional, or otherwise - to rely upon. Still others experience all of the above limits on their abilities to participate effectively in the process.

We believe that the critical measure for assessing any new initiatives for achieving administrative efficiencies must be the potential impact on claimants and beneficiaries. Proposals for increasing administrative efficiencies must bend to the realities of claimants’ lives and accept that people face innumerable obstacles at the time they apply for disability benefits and beyond. SSA must continue and improve its established role in ensuring that an individual’s claim is fully developed before a decision is made and must ensure that its rules reflect this administrative responsibility.

On October 29, 2007, SSA published a Notice of Proposed Rulemaking (NPRM), which would make major changes to the appeals process.³⁶ The disability community and others registered significant concerns and opposition to major sections of the NPRM because of the impact the proposals would have on claimants and beneficiaries. As a result, Commissioner Astrue has

³⁵ 72 Fed. Reg. 61218 (Oct. 29, 2007).

³⁶ *Id.*

announced that he is withdrawing the controversial sections of the proposal and we believe that he and his staff are working in good faith to find alternative approaches which will not have negative impacts on claimants. We applaud Commissioner Astrue's efforts and have pledged to work with SSA to find such alternative approaches.

CONCLUSION

Thank you for the opportunity to testify today. For people with disabilities, it is critical that SSA be given enough funding to make disability decisions in a timely manner and to carry out its other mandated workloads.

We also support changes to improve the disability claims process so long as those changes do not affect the fairness of the procedures used to determine disability. For people with disabilities, it is critical that SSA receive adequate funding to carry out its mandated services and improve its process for making disability determinations.

On Behalf of:

**American Council of the Blind
American Network of Community Options and Resources
Association of University Centers on Disabilities
Council of State Administrators of Vocational Rehabilitation
Easter Seals, Inc.
Epilepsy Foundation
Goodwill Industries International
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network
National Industries for the Blind
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
Title II Community AIDS National Network
United Cerebral Palsy
United Spinal Association**