



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

**Hearing on
Clearing the Disability Claims Backlogs: The Social Security Administration's
Progress and New Challenges Arising From the Recession**

**Subcommittee on Social Security
House Ways and Means Committee**

November 19, 2009

Testimony of

Beth Bates, Esq.

**On behalf of the
Consortium for Citizens with Disabilities
Social Security Task Force**

ON BEHALF OF:

American Association on Intellectual and Developmental Disabilities
American Council of the Blind
American Network of Community Options and Resources
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law
Community Access National Network (TIICANN)
Epilepsy Foundation
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network
National Health Care for the Homeless Council
National Organization of Social Security Claimants' Representatives
National Spinal Cord Injury Association
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy
United Spinal Association
World Institute on Disability

**TESTIMONY OF BETH BATES, ON BEHALF OF THE SOCIAL SECURITY TASK FORCE,
CONSORTIUM FOR CITIZENS WITH DISABILITIES**

Chairman Tanner, Ranking Member Johnson, and Members of the House Ways and Means Social Security Subcommittee, thank you for inviting me to testify at today's hearing on "Clearing the Disability Claims Backlogs: The Social Security Administration's Progress and New Challenges Arising From the Recession." I am honored to testify today but am saddened that the reason is because my clients have waited so long and endured many hardships before receiving the disability benefits to which they are entitled.

I am an attorney in Jackson, TN, and a member of the National Organization of Social Security Claimants' Representatives (NOSSCR). For more than 25 years, I have represented individuals with disabilities in their claims for Social Security and Supplemental Security Income (SSI) disability benefits. I am testifying today on behalf of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force, of which NOSSCR is an active member. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the more than 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force (hereinafter CCD) focuses on disability policy issues in the Title II disability programs and the 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 the 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).

Because the economic downturn has led to an unexpected surge of new applications, SSA finds itself at a critical crossroads. The wave of new claims is having a very significant impact at the state Disability Determination Services (DDSs) that will eventually affect the hearing level. At the DDS levels (initial and reconsideration), the number of new applications, applications waiting for a decision, and processing times are all on the rise. In fiscal year (FY) 2009, SSA received 385,000 new claims, an increase of nearly 15% since the end of FY 2008. Even more worrisome is the growing backlog of pending initial claims at the DDSs, i.e., those waiting for a decision, up nearly 40% since the end of FY 2008.

In FY 2009, the news was more positive at the hearing level. For the first time in a decade, SSA finished FY 2009 with fewer hearing level cases waiting for a hearing and decision than at the beginning of the year. But we are deeply concerned that any progress in eliminating the hearing level backlog will be delayed as the surge of new applications are denied and then are appealed, putting SSA's plan to eliminate the hearing level backlog by 2013 at risk.

While recent appropriations have allowed SSA to hire some new staff and to reduce processing times at the hearing level, these amounts will not be adequate to fully restore the agency's ability to carry out its mandated services. Given the many years of under-funding and the need for more than a \$600 million annual increase just to keep up with fixed costs, additional funding is required to reduce and eliminate the backlog at the DDS and hearing levels and to provide essential services to the public.

While the current situation is dire, without adequate, ongoing appropriations to fund SSA, the forward progress recently made by the agency will deteriorate, leaving people with severe disabilities to wait years to receive the benefits to which they are entitled.

THE IMPACT ON PEOPLE WITH DISABILITIES

As the backlog in decisions on disability claims continues to grow, people with severe disabilities have been bearing the brunt of the delays. 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.¹ Numerous recent media reports across the country have documented the suffering experienced by these individuals. Your constituent services staffs are likely to be well aware of the situations faced by people living in your districts and they provide valuable assistance. I have had many contacts with Chairman Tanner's district offices in Jackson and Union City, Tennessee. His staff has been extremely helpful, when they are able to assist.

Backlog in Appeals of Disability Claims: The Human Toll

I have represented individuals in their Social Security and SSI disability claims since 1984 at all administrative and judicial levels. My clients' hearings are held by Administrative Law Judges (ALJs) in the Memphis and Nashville, TN, hearing offices of SSA's Office of Disability Adjudication and Review (ODAR). Like the growing number of initial applications and hearing requests, my client caseload has grown by 40%. I have noticed that my clients are waiting longer and longer for hearings to be scheduled. The experiences of several of my clients illustrate the hardships endured by many claimants waiting for a decision on their claims and for payment of awarded benefits:

◆ Mrs. W lives in Dyersburg, TN, with her husband and young family. She is illiterate and reclusive. She and her family receive much assistance from older family members. She applied for disability benefits on August 7, 2008, based on mental retardation. She was denied despite psychological evaluations showing IQ scores in the 60s and deficits in adaptive function. As her attorney, I asked for a decision on the record both at the Disability Determination Services (DDS) and hearing levels. Her claim was denied by the DDS and her hearing request was filed on February 20, 2009. She is still waiting for a hearing date.

◆ Mr. H lives in Huntingdon, TN. When he first retained me on April 3, 2008, he and his teenage son were homeless. They were forced to stay in a motel in a dangerous area. I filed an online disability report; Mr. H completed SSI and Social Security disability applications. Mr. H had worked as a sawmill laborer and a grocery bagger. He had been out of the workforce for a time caring for his invalid mother until her health worsened and she had to enter a nursing facility. Mr. H suffers from liver disease, arthritis, coronary artery disease, depression and adult attention deficit disorder. Fortunately, he and his son were able to move into public housing. He was denied at the first two levels by the Tennessee DDS and requested a hearing on January 23, 2009. He is still waiting for a

¹ If a claimant dies while a claim is pending, the SSI rule for payment of past due benefits is very different – and far more limited – than the Title II rule. In an SSI case, the payment will be made in only two situations: (1) to a surviving spouse who was living with the claimant at the time of death or within six months of the death; or (2) to the parents of a minor child, if the child resided with the parents at the time of the child's death or within six months of the death. 42 U.S.C. § 1383(b)(1)(A) [Section 1631(b)(1)(A) of the Act]. In Title II, the Act provides rules for determining who may continue the claim, which includes: a surviving spouse; parents; children; and the legal representative of the estate. 42 U.S.C. § 404(d) [Section 202(d) of the Act]. Thus, if an adult SSI claimant (age 18 or older) dies before actually receiving the past due payment and if there is no surviving spouse, the claim dies with the claimant and no one is paid.

hearing date. Mr. H and his son live on state welfare benefits of approximately \$185 per month plus food stamps.

◆ Mr. M is homeless and has been diagnosed with bipolar disorder. He has recent suicide attempts. I began to represent him in April 2008. He had previously requested a hearing while living near Tampa, FL. His brother, who lives in rural western Tennessee, attempted to rescue Mr. M. However, Mr. M decompensated in the summer of 2008 and had to be hospitalized at Western State Mental Hospital in Tennessee. Upon discharge, he was released to a group home in Nashville, some 100 miles away from his brother. He lived for almost a year in the group home and now has a supportive housing apartment. He has no income. Mr. M's hearing is scheduled on December 17, 2009, some 18 months after he came to Tennessee. I have previously requested on the record decisions twice, but have received no response to my requests.

Most claimants' representatives have clients who have faced similar difficult circumstances to those endured by mine, including deteriorating health and even death, due to lack of health insurance and access to necessary medical treatment, sometimes as simple as antibiotics. Foreclosures and bankruptcies have increased, with claimants losing their homes and vehicles and their economic stability. I have included more descriptions of other claimants and the hardships they have faced at the end of my statement, starting on page 12.

SSA'S NEED FOR ADEQUATE RESOURCES TO ADDRESS GROWING BACKLOGS

For many years, SSA did not receive adequate funds to provide its mandated services, a key reason for the hearings backlog. Between FY 2000 and FY 2007, the resulting administrative funding shortfall was more than \$4 billion. The dramatic increase in the hearing level disability claims backlog coincided with this period of significant under-funding.

Recent Congressional efforts to provide SSA with adequate funding for its administrative budget have been encouraging. In FY 2008, the tide finally changed for the first time in a decade, when Congress appropriated \$148 million over the President's budget. The FY 2009 SSA appropriation provided SSA with more than \$700 million over the FY 2008 appropriation.

We are extremely grateful to Congress for recognizing SSA's need for adequate resources and including additional funds for SSA in the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA provided SSA with \$500 million to handle the unexpected surge in both retirement and disability applications due to the economic downturn. SSA also received badly needed funds to replace its aged National Computer Center. With the FY 2009 appropriation and the ARRA funding, SSA planned to hire 5,000 to 6,000 new employees, including 147 new ALJs and 850 hearing level support staff. This additional staff undoubtedly led to SSA's ability to make progress on the backlog at the hearing level.

Congress appears to be moving towards providing SSA with an FY 2010 appropriation approximately the same as President Obama's request of \$11.45 billion for SSA's Limitation on Administrative Expenses (LAE), a 10 percent increase over the FY 2009 appropriation. While the agency is operating under a Continuing Resolution, we are optimistic that SSA's final FY 2010 appropriation will be similar to the \$11.45 billion amount, allowing SSA to hire more staff, including 226 additional ALJs and support staff.

WILL THE HEARING LEVEL BACKLOG BE ELIMINATED BY 2013?

The most significant delays in SSA's disability determination process are at the hearing level. The average processing time for cases at the hearing level has increased dramatically since 2000, when the average time was 274 days. In FY 2009, the average processing time for disability claims at the hearing level was 491 days, about 16.5 months. We appreciate the effort by SSA to reduce the processing time, but an average of 16.5 months – close to one and a half years – is still too long for individuals waiting for a hearing decision. In addition, the average processing times at the initial and reconsideration levels are increasing. For individuals with disabilities who have no health insurance, have lost their homes, have declared bankruptcy, or who have died, that is simply too long to wait.

The current processing times in some hearing offices are striking, and much longer than the 491-day average at the end of FY 2009. It is important to keep in mind that this is an “average” and that many claimants will wait longer. In September 2009, the average processing time at 48 hearing offices was above the 491 day national average, with 20 offices over 600 days.

Is the Hearing Backlog Improving? By the end of FY 2009, it was clear that ODAR was making slow but steady process in key areas to address its backlog and improve processing times, thanks to the hard work of ODAR ALJs and staff and the additional resources available due to Congressional appropriations, including the ARRA funding.

- **Pending cases.** For the first time in a decade, ODAR finished FY 2009 with fewer hearings pending than in the prior year. The increased resources, including 147 new ALJs and support staff are having a positive impact at the hearing level. The pending number of cases dropped for nine straight months from a record high of 768,540 in December 2008 to 722,822 in September 2009. This is the lowest pending number of ODAR cases since February 2007. The pending number dropped by 11,377 in September 2009 alone, the biggest drop in FY 2009. The reduction in pending cases is even more notable since the number of requests for hearing increased in FY 2009, up to 625,003, a 5.7% increase over the 591,888 received in FY 2008.
- **Processing times.** The average process time in September 2009 was 472 days, the lowest monthly processing time since November 2005. The average processing time for all of FY 2009 was 491 days, down from 514 days in FY 2008.
- **Dispositions.** The number of dispositions cleared by ALJs on a daily basis was 2,940.47 in September. This is the highest monthly average since records have been kept, beginning in FY 2004. The increase is concomitant with the record number of ALJs now on duty. For the year, dispositions were up about 20%.
- **Age of pending cases.** The length of time cases are pending is also improving. The percentage of requests for hearing pending over one year was 31% in September 2009. This is the lowest percent since October 2004. The average age of a pending case is 282 days. It peaked this year at 317 days in January 2009.

Improvement Is Not Uniform. Despite the overall improvement in the hearing level statistics, not every hearing office has benefited and some claimants are waiting even longer than one year ago. On one hand, some offices have experienced exceptional improvement in processing times, as much as 4 to 5 months in just one year, for example: Madison, WI; Houston-Bissonet, TX; and Long Beach, CA. In contrast, other offices continue to experience worsening times that are several months longer than last year, for example: Memphis, TN; Louisville, KY; and Bronx, NY. A comparison of processing

times at the end of FY 2009 and FY 2008 for hearing offices in or near the districts of Subcommittee Members reflects this disparity and the fact that much work lays ahead.²

California: Los Angeles Downtown: 362 days (FY09) vs. 376 days (FY08); • Los Angeles West: 492 days (FY09) vs. 525 days (FY08); • Long Beach: 351 days (FY09) vs. 533 days (FY08)

Florida: Tampa: 539 days (FY09) vs. 622 days (FY08)

Kentucky: Lexington: 452 days (FY09) vs. 448 days (FY08); • Louisville: 545 days (FY09) vs. 465 days (FY08)

New York: Bronx: 605 days (FY09) vs. 516 days (FY08); • Manhattan: 490 days (FY09) vs. 420 days (FY08); • Queens: 482 days (FY09) vs. 446 days (FY08)

North Dakota: Fargo: 448 days (FY09) vs. 485 days (FY08)

Ohio: Columbus: 630 days (FY09) vs. 771 days (FY08)

Pennsylvania: Elkins Park: 360 days (FY09) vs. 402 days (FY08); • Philadelphia: 350 days (FY09) vs. 386 days (FY08); • Philadelphia East: 377 days (FY09) vs. 422 days (FY08)

Tennessee: Memphis: 538 days (FY09) vs. 442 days (FY08); • Nashville: 501 days (FY09) vs. 475 days (FY08)

Texas: Dallas Downtown: 367 days (FY09) vs. 463 days (FY08); • Dallas North: 331 days (FY09) vs. 403 days (FY08); • Fort Worth: 306 days (FY09) vs. 372 days (FY08); • Houston-Bissonet: 328 days (FY09) vs. 471 days (FY08); • Houston Downtown: 340 days (FY09) vs. 298 days (FY08); • San Antonio: 330 days (FY09) vs. 427 days (FY08)

Washington: Seattle: 511 days (FY09) vs. 551 days (FY08)

Wisconsin: Madison: 488 days (FY09) vs. 652 days (FY08); • Milwaukee: 627 days (FY09) vs. 658 days (FY08)

SIGNIFICANT INCREASE IN NEW CLAIMS FILED AND GROWING DDS BACKLOGS

Since the end of FY 2008, new disability claims filed have been climbing steadily, up nearly 15% by the end of FY 2009. But what is more troubling is how the increase grew throughout FY 2009: December 2008 Quarter: 6.92%; March 2009 Quarter: 15.23%; June 2009 Quarter: 16.32%; September 2009 Quarter: 20.25%.

The most alarming trend is the increase in the number of pending claims (initial and reconsideration levels), up 38.8% since the end of FY 2008 and climbing from 763,183 to 1,059,241. This means that, at the end of FY 2009, more than 1 million disability applicants were waiting for a decision on their claims at the initial and reconsideration levels. When you add the 722,822 pending cases at the

² The processing times reflect the times at the end of September in the respective fiscal year.

hearing level, nearly 1.75 million people with disabilities were waiting for a decision. If the new applications continue to increase at the higher level seen in recent months, the total number of pending initial applications alone in the DDSs could hit over 1,000,000 claims by the end of FY 2010. This would be an 80% increase in pending initial claims in just one year.

Claimant representatives in some states, including myself in Tennessee, have noticed the increase in processing times. This is not surprising since the percentage increase of pending cases in some states is much higher than the national average. For example, at the initial level, the number of pending claims increased nationwide by 38.1% at the end of FY 2009, compared to the end of FY 2008. However, in my state of Tennessee, the increase was 66.2%. Other states with significantly higher percentage increases in pending initial level claims include: North Dakota (68.5%); Ohio (59.3%); and Texas (55.8%).

What does the increase in applications and pending claims at the DDSs mean for the hearing level? Approximately 22% of the initial claims will result in a hearing request. This means there is a potential increase of 85,000 additional hearings just from the FY 2009 applications, a statistic that underscores the fragility of the ODAR progress accomplished in FY 2009.

Looking more closely at the situation in my state of Tennessee, there is reason to be concerned. The increase in new claims will contribute to worsening a difficult situation at the hearing level. Tennessee had one of the biggest increases in pending claims in FY 2009 (66.2%), which was much higher than the national average. Historically, Tennessee has had one of the lowest DDS allowance rates. In FY 2008, the Tennessee DDS allowed only 25.1% of initial claims (vs. a 36.0% national average) and only 8.7% of requests for reconsideration (vs. a 13.8% average). Out of 52 DDSs, Tennessee rated 50th, slightly better than only Mississippi and Georgia. As noted above, the processing times at both the Memphis and Nashville ODAR hearing offices did not improve in FY 2009 but rather grew worse – Memphis by nearly 100 days or more than 3 months, and Nashville by 26 days or nearly one month. All of these trends – increased applications, a very low DDS allowance rate, and worsening hearing level processing times – do not bode well for my clients and other individuals in the state. As a result, I fear that things will get worse before they get better.

Exacerbating the problem of a significant increase in new claims is the impact on DDSs of state budget crises. Even though DDS salaries, offices, and overhead are fully funded by SSA, some states are imposing hiring restrictions and furloughs of employees, including DDS workers, because of budget problems. Earlier this year, Commissioner Astrue wrote to Governors, asking them to exempt DDSs from hiring freezes and furloughs. In September 2009, Vice-President Biden sent a letter to Gov. Edward Rendell, the Chair of the National Governors' Association, also urging that states exempt DDS employees from state furloughs. These furloughs lead to loss of administrative funding for the state DDSs and, more importantly, delay payment of benefits to disabled beneficiaries.

SSA's ABILITY TO PERFORM OTHER IMPORTANT WORKLOADS

Program Integrity Workloads. The processing of continuing disability reviews (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. However, the number of reviews actually conducted is directly related to whether SSA receives the necessary funds. In addition, it is important, when it conducts work CDRs, that SSA assess whether reported earnings have

been properly recorded and ensure that it properly assesses whether work constitutes substantial gainful activity (SGA).

Impact on Post-Entitlement Work. Staffing shortages also have led to SSA's inability to fully carry out many other critical post-entitlement workloads. One area that has slipped, often with a very detrimental impact on people with disabilities, is the processing of earnings reports by beneficiaries. When beneficiaries faithfully notify SSA of earnings or other changes that may reduce their benefit payment amounts, it may be months or years before SSA sends an overpayment notice to the beneficiary, demanding repayment of sometimes tens of thousands of dollars of accrued overpayments. It is shocking to beneficiaries to receive these notices, when they reasonably assumed that SSA had processed the information they submitted, and it is challenging, if not impossible, for someone subsisting on benefits alone to repay the overpayments. Many individuals with disabilities are wary of attempting a return to work out of fear that this may give rise to an overpayment, resulting in a loss of economic stability and health care coverage upon which they rely.

SSA needs to develop a better reporting and recording system and promptly adjust benefit payments – thus preventing these overpayments. It is important to note that, in and of themselves, overpayments do not indicate fraud or abuse as beneficiaries are encouraged to work if they are able. The problems arise when reported earnings are not properly recorded and monthly overpayments are not properly adjusted.

CCD RECOMMENDATIONS REGARDING SSA's ADMINISTRATIVE FUNDING

We are optimistic that SSA will receive a final FY 2010 appropriation of \$11.451 billion for SSA's LAE, the same amount proposed by the President. SSA will use this funding and about \$350 million from the ARRA funding to address the growing workloads facing the agency. Based on these funding levels, during FY 2010, SSA will be spending at least \$11.8 billion to address the current staffing levels and associated costs necessary for the agency to function.

In FY 2011, SSA will be faced with additional costs of nearly \$620 million just to deal with inflationary costs associated with items such as salaries, benefits, rents, and facility security. The resulting funding level, \$12.42 billion will not address the increased number of new claims, the newly created DDS backlog, and SSA's plan to eliminate the hearing level backlog by 2013. To address these workloads, SSA will need additional resources. We estimate that an additional \$780 million will be necessary – at least \$480 million to address the increased number of disability claims and at least \$300 million to continue making progress in reducing and eliminating the hearings backlog by 2013.

To address the unprecedented increase in workloads and to prevent a severe disruption in service delivery, we recommend that a minimum of \$13.2 billion be included in the FY 2011 President's budget request for SSA's administrative funding.

RECOMMENDATIONS FOR IMPROVING THE DISABILITY CLAIMS PROCESS

Money alone will not solve SSA's crisis in meeting its responsibilities. Commissioner Astrue is committed to finding new ways to work better and more efficiently. CCD has numerous suggestions for improving the disability claims process for people with disabilities. We believe that these recommendations and agency initiatives, which overall are not controversial and which we generally support, can go a long way towards reducing, and eventually eliminating, the disability claims backlog.

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 alone. The purposes 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 critical measure for assessing initiatives for achieving administrative efficiencies must be how they affect 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 claimants 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.

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 a claim is fully developed before a decision is made and must ensure that its rules reflect this administrative responsibility.

Technological Improvements

Commissioner Astrue has made a strong commitment to improve and expand the technology used in the disability determination process. CCD generally supports these efforts to improve the disability claims process, so long as they do not infringe on claimants' rights. Some of the technological improvements that we believe can help reduce the backlog include the following:

1. The electronic disability folder. The initiative to process disability claims electronically has the prospect of significantly reducing delays caused by the moving and handing-off of folders, allowing for immediate access by different components of SSA or the DDS, and preventing misfiled evidence.

2. Expanding Internet access for representatives. Under Electronic Records Express (ERE), registered claimant representatives are able to submit evidence electronically through an SSA secure website or to a dedicated fax number, using a unique barcode assigned to the claim. This initiative holds great promise, given that significant problems with the current process exist.

Under the current process, representatives are to be provided with a CD of the exhibited or "pulled" file shortly before the hearing and earlier in the process after the appeal has been filed but before the file is exhibited. Due to staffing shortages in hearing offices, I have had problems obtaining the CDs and even obtaining barcodes, which allows me to submit evidence electronically. Receiving incomplete CDs leads to problems. I am unable to know what evidence is in the record so that I can determine what evidence I need to obtain and submit. This also can lead to submission of duplicate

evidence, which is time-consuming for ODAR staff but is the only way that I can ensure that ODAR has received the evidence. This can cause significant delay both during and after the hearing.

We are optimistic that these problems will be resolved in the near future. I am very much looking forward to having direct access to my clients' electronic folders. A small group of representatives is involved in an SSA pilot that gives them direct access to their clients' electronic folders, allowing them to download the contents through the ERE website. SSA has been working on security and authentication issues and has a plan to gradually rollout this initiative. I believe that it will make the hearing process more efficient for all parties involved – claimants, their representatives, and SSA.

3. Use of video hearings. Video hearings allow ALJs to conduct hearings without being at the same geographical site as the claimant and representative and have the potential to reduce processing times and increase productivity. 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.³ However, we have received complaints from representatives that, in some cases, ALJs are discouraging claimants from exercising their right to an in-person hearing. A new SSA pilot allows representatives to participate in video hearings from their own private offices, with their clients present in the representative's office. The representative must agree to the terms established by SSA. This pilot provides claimants with another option for their hearings.

Other Improvements at the Hearing Level

1. The Senior Attorney Program. This program allows senior staff attorneys in hearing offices to issue fully favorable decisions in cases that can be decided without a hearing (i.e. "on the record"). I have had clients approved for benefits by senior attorneys in both the Memphis and Nashville hearing offices. This cuts off many months in their wait for payment of benefits. I am pleased that Commissioner Astrue decided to authorize the program for at least the next two years.⁴ In FY 2009, senior attorneys decided more than 36,300 cases, a 50% increase over FY 2008. This means that more than 36,000 claimants were able to receive their disability benefits months sooner.

2. Findings Integrated Templates (FIT). FIT is used for ALJ decisions and integrates the ALJ's findings of fact into the body of the decision. While the FIT does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision. Representatives can use the FIT template, which is available on the SSA website, to draft proposed favorable decisions. Many representatives are now using the template either when requested by the ALJ or on their own initiative. When the draft proposed decision is submitted to the ALJ, it can lead to a speedier decision.

3. Increase time for hearing notice. We have previously recommended that the time for providing advance notice of the hearing date be increased from the current 20 days to 75 days. Based on my experience, I strongly believe that this increase will allow more time to obtain medical evidence before the hearing and makes it far more likely that the record will be complete when ALJ reviews the file before the hearing. The 75-day time period has been in effect in SSA's Region I states since August 2006⁵ and, based on reports from representatives, has worked well.

³ 20 C.F.R. §§ 404.936 and 416.1436.

⁴ The program is extended through August 10, 2011. 74 Fed. Reg. 33327 (July 13, 2009).

⁵ 20 C.F.R. § 405.315(a).

Improvements at the Initial Levels

CCD supports initiatives to improve the process at the initial levels so that the correct decision can be made at the earliest point possible and unnecessary appeals can be avoided. Improvements at the front end of the process can have a significant beneficial impact on preventing the backlog and delays later in the appeals process.

1. New Screening Initiatives. We support SSA's efforts to accelerate decisions and develop new mechanisms for expedited eligibility throughout the application and review process. We encourage the use of ongoing screening as claimants obtain more documentation to support their applications. However, 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 2007.⁶ The QDD process has the potential of providing a prompt disability decision to those claimants who are the most severely disabled. Since its inception, the vast majority of QDD cases have been decided favorably in less than 20 days, and sometimes in just a few days.
- **Compassionate Allowances.** This initiative allows SSA to create "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..." SSA has published an initial list of 50 conditions on its website, with more to be added at a later date. Unlike the QDD screening, which occurs only when an application is filed, screening for compassionate allowances can occur at any level of the administrative appeals process. SSA has held recent Compassionate Allowance outreach hearings with expert panels to consider early onset Alzheimer's disease and schizophrenia.

2. Improve development of evidence earlier in the process. In previous testimony, CCD has made a number of recommendations to ensure that disability claims are properly developed at the beginning of the process. Claimants' representatives are often able to provide evidence that we believe could have been obtained by the DDSs earlier in the process. Our recommendations include:

- **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 the application, particularly in light of electronic filings, so that all impairments and sources of information are identified, including non-physician and other professional sources.
- **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. However, DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. One way to address this would be for SSA to encourage DDSs to send Medical Source Statement forms to treating and examining doctors. These simple forms translate complex, detailed medical source opinions into practical functional terms useful to the vocational professionals at DDSs and hearing offices.

⁶ 20 C.F.R. §§ 404.1619 and 416.1019.

- **Increase reimbursement rates for providers.** To improve provider response to requests for records, appropriate reimbursement rates for medical records and reports need to be established. Appropriate rates should also be paid 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 reversals at the appeals levels are due to earlier erroneous application of existing SSA policy. Additional training should be provided on important evaluation rules such as: weighing medical evidence, including treating source opinions; the role of non-physician evidence; the evaluation of mental impairments, pain, and other subjective symptoms; the evaluation of childhood disability; and the use of the Social Security Rulings.
- **Improve the quality of consultative examinations.** Steps should be taken to improve the quality of the consultative examination (CE) process. There are far too many reports of inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant's.

3. Eliminate reconsideration. To create a more streamlined process, we have supported elimination of the reconsideration level and adding some type of pre-decision contact with the claimant. SSA has tested the elimination of reconsideration in ten “prototype” states [AL, AK, CA-Los Angeles, CO, LA, MI, MO, NH, NY-Albany and New York City, PA] for nearly ten years and it was recently extended through September 28, 2012.⁷ Claimants’ representatives in those states report that the process works well without a review level between the initial determination and the ALJ level.

ADDITIONAL RECOMMENDATIONS

In addition to addressing the backlog and SSA’s funding issues, there are several other legislative proposals that the Subcommittee may be considering this year.

- **Protecting claimants’ privacy rights.** We understand that it can be cumbersome for SSA to obtain medical records, as it is for claimants and their representatives, and that SSA is exploring more efficient ways to secure the necessary evidence. While we support ways to make this process more efficient, we believe that claimants’ privacy rights must be protected. We will work with SSA to find a way to obtain, as efficiently as possible, a claimant’s authorization for release of medical records to SSA, while protecting the individual’s privacy rights.
- **Extension of the fee demonstrations in the SSPA.** Access to experienced and qualified representatives through the lengthy and complex application process is critically important to claimants. To this end, we support allowing claimants to enter into voluntary agreements with representatives for fee withholding and direct payment procedures whether under Title II or Title XVI. The Social Security Protection Act of 2004 established two demonstration projects that should be made permanent because they have proven to be effective in increasing claimants’ access to effective representation: (1) Extension of the Title II attorney fee withholding and direct payment procedures to SSI claims; and (2) Allowing nonattorney representatives to qualify for fee withholding and direct payment, provided they meet certain requirements. Unless they are extended or made permanent, the demonstrations will sunset March 1, 2010.

⁷ 74 Fed. Reg. 48797 (Sept. 24, 2009).

- **Increase and indexing of the fee cap.** Rep. John Lewis has introduced H. R. 1093, which contains two provisions regarding the current \$5,300 fee agreement fee cap: (1) Increase the current fee cap to \$6,264.50 (which represents the figure if it had been adjusted for inflation since the last increase in 2002); and (2) Index the fee cap for future years to the annual COLA. We support these changes since they ensure that there will be a knowledgeable, experienced pool of representatives available to represent claimants.

- **Work incentives.** The Ticket to Work and Work Incentives Improvement Act was enacted nearly ten years ago and is overdue for evaluation of its effectiveness in employment of those receiving Title II and SSI disability benefits. We urge renewal, strengthening, and permanent extension of expired/expiring provisions including (1) SSA's Title II demonstration authority to test promising approaches for work incentives and related provisions; (2) Demonstration to Maintain Independence, set to expire this year, to provide Medicaid buy-in coverage to working individuals whose conditions or disabilities are not yet severe enough to qualify them for disability benefits; (3) Protection and Advocacy for Beneficiaries of Social Security to protect the rights of beneficiaries as they attempt to return to work; and (4) Work Incentives Planning Assistance, which provides state grants for outreach and education to individuals with disabilities about supports and services regarding employment.

CLAIMANT STORIES PROVIDED BY REPRESENTATIVES IN 2009⁸

CALIFORNIA

◆ Mr. B is a 57 year old man from Los Angeles, CA. He worked in construction for over 30 years before he became disabled. He has been unable to work since 2003 and is homeless. His only income is \$221 per month from General Relief. He has congestive heart failure, torn rotator cuffs in both shoulders, severe arthritis in his knees, severe depression, and possible cerebral atrophy. He applied for benefits in October 2007. After his claim was denied, Mr. B obtained representation and he filed a request for a hearing in April 2008. He has been homeless the entire time while he waited for a hearing. During the wait, his depression and physical health have worsened. Mr. B's condition requires him to rest during the day and keep his feet elevated, however he was unable to comply because shelters do not allow residents to remain during the day. Not having a place to rest caused his feet and legs to swell, resulting in a great deal of pain and discomfort. He also was hospitalized after coming down with an infection in one of the shelters.

Mr. B's hearing finally took place in July 2009, more than 14 months after requested. The ALJ issued a favorable decision on November 2, 2009, more than two years after Mr. B applied for benefits. Once he begins to receive benefits, in another 3 or 4 weeks, he will finally be able to find a permanent home and start working on improving his health.

FLORIDA

◆ Mr. M is a 57 year old man who worked as a Vocational Rehabilitation Specialist for over 20 years in Florida. He developed severe arthritis throughout his body, wears bilateral hand splints, knee splints, has developed severe joint degeneration, spinal cord degeneration, is agoraphobic, depressed,

⁸ Some of these claimant descriptions appeared in testimony presented by Peggy Hathaway on behalf of the CCD Social Security Task Force at a Joint Hearing of the House Ways and Means Subcommittees on Social Security and Income Security and Family Support on *Eliminating the Social Security Disability Backlog*, March 24, 2009. The testimony is available at <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=7618>.

and anxious. He cannot take care of himself and he has no family to help him. He is about to lose his home. Mr. M has exhausted his savings and his attorney writes monthly letters to his mortgage company asking for extensions on his payments while he is waiting for his hearing. Nevertheless, the company is about to foreclose on his home.

NEW YORK

◆ A 46-year old man from Queens, NY, diagnosed with severe asthma, cardiac disease, and severe depression, requested a hearing in August 2008. He last worked as a truck driver and warehouseman. He died from cancer in September 2009. Based on information received by his attorney, his hearing will not be scheduled any time soon.

NORTH DAKOTA

◆ Mr. N worked as an assistant manager of an automotive/tire shop in Fargo, ND. He was injured while on the job in June 2006. He did not apply for Social Security disability benefits until August 2007. He has severe, chronic myofascial pain and dysfunction syndrome, joint dysfunction, and lumbar and thoracic musculoligamentous sprain/strain. He also has severe major depressive disorder and panic disorder related to his injury, which has resulted in hospitalization. Mr. N requested a hearing on March 21, 2008. He was finally found disabled by a decision of an ALJ (without a hearing) on February 19, 2009. Correct payment of his Social Security benefits was delayed due to an erroneous calculation of benefits based on his North Dakota workers compensation claim. Benefits for his wife and dependent children also were miscalculated. He received only a small portion of his regular monthly benefit (less than \$100 per month) and had to wait over seven months before he received his past due benefits and began receiving the correct monthly benefit amount. He was not receiving any wage loss benefits from workers compensation during this timeframe.

OHIO

◆ Mr. N is a 55 year old former maintenance supervisor who lives in Chillicothe, OH. He has small vessel ischemia, cerebrovascular disease, lumbar scoliosis, degenerative joint disease, vision loss, migraine headaches, depression, anxiety, fatigue, memory loss, and partial paralysis to his left side caused from two strokes. Mr. N filed his request for hearing in September 2007. While waiting for a hearing, he has had five liens put on his home, and does not have medical insurance to receive the medical treatment that he needs. His primary care physician has discussed his treatment options and has explained that his health will continue to decline, and that it is crucial for him to receive treatment as soon as possible.

◆ Mr. W, a 37 year old fork lift driver from Columbus, OH, has a head injury and bipolar disorder, which prevent him from working. He filed his application for disability benefits in November 2006. While waiting for a hearing, he and his family were evicted from their apartment and his wife left him. He is living in a house with a friend and is unable to pay rent. However, when he is awarded benefits, he will owe back payment for the rent and continues to fall further into debt.

◆ Mr. P, a 60 year old data entry person who lived in Columbus, OH, had back and knee problems, epilepsy, and number of infections that kept occurring throughout his body. He filed his application for disability benefits on April 25, 2006. While waiting for a hearing, Mr. P became increasingly ill due to infection and chronic lymphedema. He died on December 11, 2007. An on-the-record favorable decision was made on October 9, 2008, ten months after his death. Mr. P was found disabled as of May 1, 2002 (four years before he applied for benefits) through the date of his death.

PENNSYLVANIA

◆ An attorney in Fort Washington, PA, reports that many clients have difficulties applying for Title II or SSI disability benefits because they do not have health insurance or the means to pay for medical treatment. They cannot treat their impairments, so their conditions get worse, and they cannot prove the existence of disability. If they apply and are denied, there is a two-year wait for a hearing to be scheduled. For SSI applicants awarded benefits, past due benefits are paid in installments, even if they are threatened with eviction or foreclosure or are unable to pay for their medical treatment. One client, a former fast food worker, received an “on the record” decision in November 2008, but received half of her back benefit despite facing a foreclosure and has not yet received the other half of her benefits. She cannot pay for her medication or co-pays. Her attorney suggested she go to the SSA field office, but she is too sick and disabled to travel there and her cognitive impairment prevents her from effectively communicating.

◆ Mr. D lives in Dalmatia, PA. He is a veteran of the Vietnam War and is a victim of Agent Orange and has other war-related health and mental problems. He had obtained a favorable decision on his Social Security disability claim. However, because of a mix-up at SSA, it was nearly two years until his attorney was able to straighten out his payments. He has a son with the same name and the SSA system had the two individuals mixed in with each other. While waiting for his payments, Mr. D’s house went up for a Sheriff’s sale after foreclosure. Two days before the sale, he called his attorney, crying, and said that he had no more reason to live. Out of sheer desperation, they called Rep. John Kanjorski’s office, which was able to help get the Sheriff’s sale postponed. Further, within two weeks, someone at SSA was trying to straighten out the mix-up. Within two months, the payments started. Mr. D’s attorney notes that he does not believe this would have been accomplished if Rep. Kanjorski’s office had not intervened.

◆ Ms. L is 50 years old and lives in Pennsylvania. She has been diagnosed with cirrhosis of the liver caused by Hepatitis C. Although she has finally received a hearing date, the wait has been a struggle for her. She has had her utilities shut off, her car repossessed, and her health has worsened. Ms. L’s medical care is very costly. She has been non-responsive to certain treatments for her cirrhosis and is now on the liver transplant list.

TENNESSEE

◆ Mrs. C, a 43 year old radiology/CT scan tech, lives in Clarksville, TN. She is unable to work due to diabetes, depression, anxiety disorder, fluid and arthritis in her knees, spondylothesis, spinal stenosis, degenerative disc disease, broad based disc bulges and severe pain and weakness in both legs. She filed her application for disability benefits in June 2007. While waiting for her hearing, Mrs. X and her family have been evicted from their home. Both of their vehicles have been repossessed, and they are having extreme difficulties paying for their day to day living. Her husband is on the verge of being laid off and, if that happens, there will be no income at all for this family. Due to the backlog, this claimant and her family may lose everything before she is able to get a hearing date and decision.

◆ Ms. A is 61 years old and lives in Milan, TN. She has Major Depressive Disorder, which prevents her from working. She filed her application for benefits in 2007. Ms. A’s hearing has not yet been scheduled but her attorney has requested an on-the-record decision. She and her husband, who is currently employed, were forced to file for Chapter 7 bankruptcy in order to keep their house. The majority of her husband’s check is going to the bankruptcy trustee each pay period, leaving them with only \$4 to \$27 per pay period for all of their other expenses, such as groceries and utilities

◆ Mr. D, a 48 year old man who lives in Gibson County, TN, has musculoskeletal impairments. He filed his application for disability benefits in 2007. Mr. D's hearing has not yet been scheduled. He has lost his home and his wife left him. He is essentially homeless, living with various family members and friends.

◆ Mr. W is 53 years old and currently lives in Haywood County, TN. He has been diagnosed with musculoskeletal impairments. He filed his application for disability benefits in late 2004. It was denied and he had to appeal the case to federal district court. The court remanded the case, but not until mid to late 2008. After a remand hearing in 2009, his claim was allowed. However, while waiting for the decision, he lost his home and has had to live with various family members.

TEXAS

◆ Ms. A is a resident of Austin, TX, who filed a claim for disability benefits on April 27, 2006, after undergoing a quadruple coronary bypass. Ms. A's claim was denied initially and on reconsideration, and she requested a hearing on April 3, 2007, which was held on February 4, 2008. While awaiting the hearing, Ms. A experienced extreme financial hardship resulting in the foreclosure of her home and increased depression and anxiety. Unfortunately, her claim was denied by the ALJ in a April 2, 2008, decision. She appealed to the Appeals Council, which resulted in a remand order, dated August 27, 2008, for another hearing. As of this date, the remand hearing has not been scheduled, 15 months after the Appeals Council remanded the case. While waiting for her new hearing, Ms. A has continued to experience extreme financial hardship and, on several occasions, homelessness was a very real possibility.

◆ Mr. A is 45 years old and lives with his wife in Mission, TX. He has degenerative disc disease of the lumbar spine status post lumbar laminectomy, major depressive disorder, and borderline intellectual functioning, which prevent him from working. He filed his application in September 2003. The claim was denied initially in November 2003 and at reconsideration in February 2004 and he requested a hearing a few days later. While waiting for a hearing, Mr. A's house burned down in November 2004. His hearing was finally held in June 2006, more than two years after he filed his appeal. The hearing was continued in order to obtain a psychological consultative examination and a supplemental hearing was held in July 2007. The ALJ denied the claim and on appeal, the Appeals Council remanded the case back to the ALJ. During this period, Mr. A was forced to file for bankruptcy. He had a remand hearing in February 2009 before the same ALJ who previously denied his case. At the remand hearing, the ALJ announced he would be awarding a fully favorable decision.

◆ Mr. R is 48 years old and lives in San Antonio, TX. He has back pain, joint pain, hearing problems, Hepatitis C, and a head injury, which prevent him from working. He filed his application for benefits in January 2007. While waiting for a hearing, he became homeless and cannot receive proper medical attention. Mr. R has to rely on the kindness of friends for his basic necessities.

WISCONSIN

◆ A middle-aged Eau Claire area woman became disabled, when her knees deteriorated to the point where she needed knee replacements. Her knee conditions led to back problems, causing chronic pain for which she has to take highly potent narcotic drugs. After waiting nearly three years for her hearing, the ALJ allowed her case after ten minutes. While waiting for her hearing, her family lost their home to foreclosure and she had to file for bankruptcy. After the hearing, her attorney asked if they would have lost their home or had to file for bankruptcy if she had been getting her Social Security disability benefits sooner. Tearfully, she replied, absolutely not. To add insult to injury, her attorney just received a telephone message from her in early November 2009. Even though this client's fully

favorable decision was dated August 31, 2009, she has still not received either her first check or her past due benefits. She called the Social Security District Office and was told it could take 90 days for the Payment Center to get her into pay status and to issue her payment for past due benefits.

◆ In early November 2009, a man from Humbird, WI, received his fully favorable decision, almost three years after filing his Social Security disability application. Unfortunately, he was served one day later with a Summons and Complaint to foreclose his home. (His monthly mortgage payment had been increased from \$327 per month to over \$900 per month, because the mortgage lender had to pay his property taxes last year.) He is now hoping to negotiate a redemption, but it is unclear whether the mortgage holder will do so. If not, he will have to file for bankruptcy. His attorney is hoping that the SSA Payment Center will not delay payment of his case, so he will have his past due benefits to use in his attempts to work something out with the mortgage holder.

◆ Also in early November 2009, the husband of a claimant from Chippewa Falls, WI, came to the wife's attorney's office to ask if there is anything the attorney could do to expedite payment of the wife's benefits. His wife had filed her application in July 2006. Nearly three years later, she received a fully favorable hearing decision, dated June 19, 2009. Five months after the ALJ found her disabled, she still has not received either a monthly benefit payment or her past due benefits. The client and the attorney's staff have placed calls to the SSA field office. They have been told that the delay is caused by the Payment Center and that all the field office can do is try to prod the payment center to pay the benefits.

◆ While waiting for his hearing, Mr. L became homeless. He lived in the La Crosse, WI, area and was waiting for a traveling ALJ to schedule his hearing in La Crosse. Over a one and a half year wait, Mr. L's attorney tried to expedite the hearing since he was homeless and winter was approaching. In January 2009, his attorney sent the ALJ another letter indicating that Mr. L was living in a shanty in the woods, hunting rabbit for food, and using a campfire to keep warm. Eventually, his hearing was scheduled for April 2009, but the ALJ approved the case without the need for a hearing. By that time, Mr. L had moved to another state to stay with someone.

* * * *

CONCLUSION

As you can see from the circumstances of these claimants' lives and deaths, delays in decision-making on eligibility for disability programs can have devastating effects on people already struggling with difficult situations. On behalf of people with disabilities, it is critical that SSA be given substantial and adequate funding to make disability decisions in a timely manner and to carry out its other mandated workloads. We appreciate your continued oversight of the administration of the Social Security programs and the manner in which those programs meet the needs of people with disabilities.

Thank you for the opportunity to testify today. I would be happy to answer questions.

ON BEHALF OF:

American Association on Intellectual and Developmental Disabilities
American Council of the Blind
American Network of Community Options and Resources
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law

Community Access National Network (TIICANN)
Epilepsy Foundation
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network
National Health Care for the Homeless Council
National Organization of Social Security Claimants' Representatives
National Spinal Cord Injury Association
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy
United Spinal Association
World Institute on Disability