



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

**Hearing before the
House Ways and Means Committee
Subcommittee on Social Security**

**Determining Eligibility for Disability Benefits:
Challenges Facing the Social Security Administration
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**Testimony of Lisa Ekman, Co-Chair
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Justice in Aging
National Alliance on Mental Illness
National Association of Disability Representatives
National Committee to Preserve Social Security and Medicare
National Council on Independent Living
National Disability Institute
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives (NOSSCR)
Paralyzed Veterans of America
Special Needs Alliance
The Arc of the United States
United Cerebral Palsy
United Spinal Association

TESTIMONY OF LISA EKMAN ON BEHALF OF THE SOCIAL SECURITY TASK FORCE,
CONSORTIUM FOR CITIZENS WITH DISABILITIES

Chairman Johnson, Ranking Member Larson, and Members of the Subcommittee, thank you for the opportunity to provide testimony for this hearing entitled “Hearing on Determining Eligibility for Disability Benefits: Challenges Facing the Social Security Administration.”

I am the Director of Government Affairs for the National Organization of Social Security Claimants’ Representatives (NOSSCR). I am also a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force. Today I am testifying on behalf of Social Security Task Force and the undersigned organizations. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. 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. The Title II and the SSI disability programs provide modest but vital income support to individuals with significant disabilities and their families. More than 1 in 5 people with disabilities of working age lives in poverty in the US, nearly twice the poverty rate of their non-disabled peers.¹ That rate would be significantly higher without the modest benefits that the Social Security disability programs provide. Unfortunately, the chronic underfunding of the Social Security Administration’s (SSA) administrative budget has undermined the ability of the agency to issue timely disability determinations and degraded customer service across the agency.

- The wait time to receive a determination from an Administrative Law Judge (ALJ) has reached an historic high of 628 days and this has devastating consequences for the claimants while they wait: some become homeless, some declare bankruptcy and some die.
- The past two decades demonstrate that when the Social Security Administration (SSA) receives consistently adequate funding it can reduce both the number of people waiting for a hearing and the time it takes to receive a determination from an ALJ. When SSA does not receive adequate funding, as it has not since 2010, the backlog and wait times grow. No search for efficiencies, reprioritization of tasks or technological improvements can substitute for adequate resources.
- SSA’s CARES plan contains some promising initiatives but more could be done to reduce the hearing backlog and wait time for a disability decision.
- A number of SSA’s recent regulatory changes are likely to increase the backlog and hearing delay and therefore should be reversed.

The CCD Social Security Task Force is pleased that SSA is examining every part of its disability determination process to implement backlog reduction measures within the inadequate budget it receives. However, the Task Force urges very careful consideration of increased use of technology in the hearing process or other initiatives that might threaten the ability of claimants to receive full consideration of their claims, undermine due process protections, or are not reflective of the ability of claimants (especially unrepresented claimants) to understand or comply with obligations created by new rules in the search for efficiencies. For example, while video hearings can be a useful option for certain claimants, SSA should not weaken claimants’ ability to choose an in-person hearing when they believe it will be the most effective method of communicating with the decision-maker in their cases.

I. The Human Toll of the Hearing Backlog

The benefits provided by the Social Security disability programs are modest but vital to the Americans and their families who receive them. As of July 2017, SSDI benefits average only \$1,171.80 per month (\$14,041.60 annually) and SSI benefits average only \$564.16 per month (\$6,769.72 annually).² These modest benefits can mean the difference between keeping a roof over one's head and being homeless, being able to afford to eat and being hungry, affording a co-pay for needed medication and skipping doses, and getting needed medical treatment and letting conditions go untreated. The current wait time to receive a determination on an appeal to an ALJ is an average of 628 days. Waiting years to get a decision on a disability claim often leads to devastating consequences both for those waiting and their families. People lose their homes, exhaust their savings, declare bankruptcy and die while waiting on a hearing and decision on their disability claim. In fact, more than 8000 people died waiting for a hearing during Fiscal Year 2016.³ That is nearly 1 person per hour.

Here is a sampling of stories of the devastating consequences the hearing backlog has had on disability claimants that CCD has learned about from claimants' representatives:

Alabama: GH filed his claim while hospitalized in January 2016 for an infected heart valve. He had worked in construction but at age 56 he became homeless and was not receiving regular healthcare. He was denied in May 2016 and requested a hearing soon after (Alabama is a "prototype" state without reconsideration). Mr. H died in April 2017 of the same condition he originally alleged. He had severe sepsis throughout his body, requiring amputation of his arms and legs. Mr. H's condition while he awaited his hearing was also complicated by severe burns he endured when he lit trash on fire in an abandoned structure in an effort to cook food and warm himself. Unfortunately, Mr. H's claim has died with him since it was an SSI claim and he was never married. He spent the last year of his life waiting for a hearing that held the possibility of benefits and medical insurance that never came.

California: KL has a learning disability and is unable to read. Despite this obstacle, he worked for nearly 25 years at a grocery warehouse and there experienced a career-ending orthopedic industrial injury. While he was recovering, he experienced complications including two heart attacks and several seizures. He became homeless while going through the initial and reconsideration stages of the SSDI application process. As a result of being homeless, he lost custody of his teenage son. He became suicidal and was hospitalized on several occasions for this. Soon after requesting an ALJ hearing in September 2015, his representative filed a request for hearing and requested that it be flagged as critical because of Mr. L's dire need and risk of suicide. The request was granted—it took eight months for Mr. L to receive a favorable decision, rather than the 19 months average processing time at his local hearing office.

Connecticut: JE was a stay at home mother and homemaker. She applied for SSI when she began experiencing memory loss for which her doctors could not find a cause or a cure. Her application was denied, and approximately seven months before her hearing, she was finally diagnosed with early onset Alzheimer's disease. By the time her hearing was held, she was unable to state her address or her correct date of birth, and she did not know where she was during the hearing.

Connecticut: RS reached the rank of Captain in the U.S. Army and served in Afghanistan. He has worked with the FAA at his local airport to prevent dangerous items from entering planes. He also attempted work for the Department of Defense handling orders at a shipping and receiving department, and for the USDA processing grant applications for rural communities. However, he was no longer able to continue working as a result of his PTSD; he received an "Individual Unemployability" determination from the VA and his records repeatedly state that he is at high risk of suicide. Mr. S applied for SSDI in April 2012. He was denied and requested an ALJ hearing in May 2013. He received a denial almost two years later, in March 2015. He retained an attorney to

help him appeal to Federal Court and got a remand in December 2016. He is still waiting for a new hearing to be scheduled.

Connecticut: LMV was a preschool teacher. In February 2015, she was in an explosion that destroyed her home and burned half her body. In addition to the burns, the fire caused her to have PTSD and a severe facial pain disorder called trigeminal neuralgia. She filed for SSDI in March 2015 and sold her car to pay for expenses while she awaited a disability determination. Her church in Hartford and some of her relatives have helped her make ends meet. She was denied and requested a hearing in April 2016, which was held in June 2017. It took an additional two and a half months for the fully favorable decision to be issued. Ms. V is currently awaiting the start of her benefits.

District of Columbia: NJ's conditions, which include injuries to his elbow and shoulder, HIV, and anxiety, required him to severely reduce his working hours as a lighting designer. His SSDI application was denied at the initial and reconsideration stage, and he requested a hearing in September 2014. Mr. J's panic attacks increased over the next two years as he feared that his friend would stop paying for his housing and he would become homeless. When Mr. J and his lawyer arrived for his scheduled hearing in September 2016, Mr. J cried and shook in the waiting room for several hours before it was determined that the ALJ was not coming to work that day. Mr. J and his lawyer waived all notice requirements and assured the hearing office staff that they would return for a hearing at the first available opening. Still, Mr. J's depression deepened after this setback and his mental health team became worried he would commit suicide. The hearing was rescheduled for November 2016 and Mr. J was quickly awarded benefits. He can now afford housing and has started to pay off debts accumulated in the years he awaited a determination on his claim.

Florida: PC was diagnosed with a liver disease called Primary Biliary Cholangitis in the late 1990s. By April 2016, his health worsened to the point that he could no longer work. He applied for disability benefits the following month. Although he met a listing, he was denied at the initial level in August 2016 and at the reconsideration level in November 2016. He was hospitalized in January 2017 for the implantation of a dialysis shunt into his neck (TIPS procedure). After many complications, he was added to the transplant list. His lawyer made an "On The Record" request in May 2017 and Mr. C received a fully favorable decision shortly thereafter. Unfortunately, Mr. C passed away in late August without having received a transplant. In the past nine months, Mr. C's lawyer has had four other clients die while awaiting hearings.

Hawaii: MR worked as a mason all his life, but had to stop due to heart disease. He applied for benefits on February 1, 2015 and filed a request for a hearing on April 26, 2016. At a hearing on August 25, 2017, Mr. R's son testified that his father was stressed by not being able to support himself, and that his heart condition got progressively worse over time. Mr. R's son was the one testifying because Mr. R died of a heart attack in November 2016, eight months before his hearing. The ALJ issued a favorable decision from the bench.

Illinois: EB worked as a truck driver. When his declining health made that job impossible, he underwent a career transformation and became a cosmetology teacher. Then his health worsened further and he applied for SSI and SSDI. He was denied at the initial and reconsideration stages and lost his housing. Mr. B bounced between sleeping in his car and his friend's garage, when he wasn't hospitalized. Mr. B hired a lawyer to help him request a hearing in August 2016, who immediately requested that the claim be flagged as critical based on dire need. A supervisor at the Orland Park hearing office denied the critical case request, saying that living in a car did not qualify as dire need. At one point, Mr. B needed a colostomy, which became infected because he lacked running water and other necessities to care for himself. Eventually, a more senior supervisor allowed the claim to be expedited and Mr. B's hearing was held on May 11, 2017—approximately nine months after he made the request. He was awarded disability benefits.

Minnesota: CH worked with the clients of a center for adults with disabilities and also drove the bus that transported them to and from the center. She had a traumatic brain injury and applied for SSDI in April 2011. While she was waiting for her hearing, she was diagnosed with terminal cancer. She was unrepresented at the time of her hearing in November 2013 and did not attend it because she was hospitalized for cancer treatment. She subsequently hired a lawyer who asked the ALJ to reschedule the hearing. The ALJ instead dismissed the case and did not respond to a request to reopen it, so Ms. H appealed to the Appeals Council. She died in January 2014. In November 2014, the Appeals Council remanded the case for a hearing and Ms. H's widower attended a hearing in June 2015 to testify about his late wife. By that time, he was also suffering from Stage 4 cancer and died before the fully favorable decision was issued. Their three orphaned children, who ranged in age from 14 to 22 when their mother's case was finally resolved, received Ms. H's retroactive benefits.

North Carolina: JT applied for disability benefits in December 2015 because of congestive heart failure. He was denied at the initial and reconsideration levels during the summer of 2016, and requested an ALJ hearing on August 11, 2016. He died of congestive heart failure exactly one year later, never having a hearing scheduled.

Ohio: RW lives in Wooster. He requested a hearing in April 2016. A few months later, he became estranged from family and lost the housing they were providing. His lawyer requested his hearing be expedited based on dire need in October 2016 and despite repeated follow-ups, the request was not considered until March 2017. At that time, Mr. W was staying with his sister for a few weeks, so the dire need request was denied. Since then, Mr. W continues to struggle to find a place to sleep each night. Mr. W has made inquiries to his Senator and frequently calls and visits his lawyer in hopes that the case can move forward. It is scheduled for a hearing in October 2017, 18 months after the request was filed.

Pennsylvania: HW had worked as a Certified Nurse Assistant, but needed to apply for disability benefits after having a heart attack in May 2013. Her other impairments include Type 2 diabetes, chronic sciatica, atrial fibrillation, and obsessive compulsive disorder. She requested an ALJ hearing in March 2014 and had a hearing in March 2017. She received the notice of award in August 2017 – 1250 days after she requested a hearing - and is now eagerly waiting to receive benefits. She says “I am grateful for a fully favorable decision in my case, and I am grateful for a support network that enabled me to stay in my own home during that time, despite being unable to meet all mortgage payments in a timely manner. However, I cannot help but think how most people in my category might not be able to endure this seemingly interminable wait, at a time when they most need the benefit.”

South Carolina: SB is 58 years old. He requested a hearing in December 2016 and one has not yet been scheduled. He has severe schizophrenia, bipolar disorder, and PTSD. He has been repeatedly hospitalized voluntarily and involuntarily in South Carolina and Nevada over the past five years because of these conditions. Without any income, it is difficult for him to get to the low-income clinic that treats him.

Texas: PS was a resident of McKinney. Until 2009, she led a comfortable upper middle-class life while working as a property manager and inspector. However, she developed chronic pain syndrome, fibromyalgia, cervical spondylosis, thoracic and lumbar spine pain, migraine headaches, intracranial hypotension, and fibromuscular dysplasia, followed by ever-increasing depression and anxiety, especially after she could no longer work. She tried every treatment doctors offered while caring for her son. She waited a long time for a hearing, but when it was scheduled in January 2016 she needed to postpone it because it was the same date as a medical test she had waited months to undergo. She hoped that the test would lead to treatment that would finally ease her pain, and that the hearing could be held quickly. The hearing was rescheduled for April 2016, but Ms. S committed suicide several weeks before it was held. She was 45 years old. She received a posthumous fully favorable decision. Her 15 year old son now receives survivor's benefits.

Texas: HW lived in the town of Pharr. He worked in construction and also harvested crops. He developed spinal problems, diabetes, and hypertension and applied for disability benefits in 2015. He requested a hearing in August 2016 and died from complications of his impairments in July 2017. At the time of Mr. W's death, his case had not yet been assigned to an ALJ or scheduled for a hearing.

Texas: LB was from San Antonio. She was a substitute teacher and school librarian until congestive heart failure, diabetes, and several white blood cell conditions (neutropenia, thrombocytopenia, myelodysplastic syndrome) made work impossible. She applied for disability benefits in 2015, requested a hearing in October 2016, and died from complications of her impairments in February 2017. At the time of her death, her hearing was still three months away.

Texas: IR lived in the town of Gonzalez. He drove oil and gas tanker trucks. After developing congestive heart failure, arthritis in his legs, and diseases of the kidneys and liver, he applied for disability benefits in 2015 and requested a hearing in March 2016. His attorney requested the hearing be expedited as a TERI (terminal) case but the request was still under review when Mr. R died in August 2016.

Utah: FP came to the United States as a refugee after the war in Bosnia, got a job as a product assembler in a factory, and became an American citizen. Many years later, after suffering an injury involving a conveyor belt at his workplace, he applied for SSDI. Mr. P was diagnosed with cancer while he was awaiting an ALJ hearing. He was able to attend the hearing, but he died during the long wait for a decision to be written. The ALJ denied Mr. P disability benefits, and a surviving family member is now appealing.

II. SSA Needs Adequate Resources to Administer the Social Security Programs

Administration of the Social Security disability programs is resource intensive. The processing and determination of initial claims and the adjudication of disability appeals require a significant amount of staff time to collect relevant information and fully develop the evidence required to make the correct determination. Unfortunately, SSA's Limitation on Administrative Expense (LAE) funding has not kept up with the agency's increasing workload. Although applications for SSI and Title II disability benefits have declined each year since 2010, there have been substantial increases in retirement, survivors, and Medicare claims, and the total number of people receiving Social Security benefits has risen. Chronic underfunding at a time of increased workloads has undermined SSA's ability to process disability applications and appeals in a timely manner.

Although processing times for initial disability applications and for completing reconsiderations of initial denials have remained relatively stable, the backlog in disability appeals at the hearing level has reached and stayed at historically high levels. As of the end of July 2017, claimants had to wait an average of 628 days from the time a hearing request was filed to receive a determination from an ALJ. There are just under 1.1 million people who have filed an appeal and face these daunting waits.

One cause of the hearings backlog is the chronic inadequacy of SSA's administrative funding. Between FY 2000 and FY 2007, the total funding shortfall exceeded \$4 billion and there was a concurrent and dramatic rise in the backlog. The backlog improved between FY 2008 and FY 2010 when Congress provided SSA with adequate administrative funding. In FY 2008, Congress appropriated \$148 million over the President's budget request, and in FY 2009 Congress provided SSA with \$700 million more than the previous year. The American Recovery and Reinvestment Act of 2009 (ARRA) provided SSA with an additional \$500 million to process the increasing number of retirement and disability applications, replace its aged National Computer Center, and hire thousands of new employees, including additional ALJs and hearing level support staff. These improvements undoubtedly assisted SSA in reducing the hearing level backlog. The FY 2010 appropriation of \$11.45 billion for SSA's LAE, a 10 percent increase over the FY 2009 appropriation, continued to provide SSA with the

resources it needed to meet its service delivery needs. Unfortunately, that trend did not continue and the inadequate funding since then has undone the progress SSA made between 2008 and 2011.

Although SSA has received a significant amount of additional funding for specified program integrity activities, core funding for SSA (LAE) has effectively been cut by about 10% since 2010 when taking inflation into account.⁴ This was during a time when the number of beneficiaries in all of the Social Security programs SSA administers (Old Age, Survivors, and Disability Insurance and Supplemental Security Income) has increased by about 13%.⁵ In addition, the funding of the Federal government through Continuing Resolutions led SSA to institute long hiring freezes (resulting in significant decreases in the overall number of staff due to attrition) and do away with overtime causing backlogs to grow in many workloads across the agency. The resulting deterioration in the ability of Social Security to serve Americans in all of its core functions is disappointing and Americans deserve better. For example, the average wait time on SSA's national 800 number is 18 minutes and nearly half of callers hang up before their call is answered. In addition, thirteen percent of callers receive a busy signal, due to the 450 fewer agents at the teleservice centers to handle the 37 million calls they receive each year.⁶ Nearly half of visitors to a field office must wait at least three weeks for an appointment and visitors without an appointment wait more than an hour for service because field offices have lost 1,400 field staff.⁷ More than 3.6 million actions were pending at the SSA Program Service Centers in January, more than double the normal pending workload at these components⁸. This backlog leads to delays in the timely adjustment of benefits and the processing of claims once approved. Critical information technology maintenance and modernization is on hold due to a lack of resources as well.

Additional funding is required for SSA's LAE to reduce and eliminate the backlog in processing disability claims and to provide essential services to the public. CCD appreciates the \$90 million in anomaly funding Congress provided to SSA to address the backlog but a one-time increase in funding cannot make up for years of underfunding. The current situation is dire and without increased adequate, ongoing appropriations to fund SSA, the situation will continue to deteriorate. We strongly urge Congress to provide SSA with sufficient administrative funding so that there are enough personnel in SSA field offices and the stage agencies to adequately process, develop, and determine disability claims in a timely manner and so SSA to hire sufficient ALJs and support staff to reduce the hearing backlog and the wait time for disability hearing decisions. Additional funding is needed to ensure that SSA is able to provide all of its critical services to retirees, survivors and people with disabilities and their families. Reprioritizing activities is not an answer – when the funding pie is too small, a bigger piece of that pie going to one activity means a smaller slice goes to other activities and SSA's service to all Americans suffers.

III. SSA's CARES Plan: More Must Be Done to Reduce Wait Times

The undersigned organizational members of the CCD Social Security Task Force appreciate the efforts that SSA is making to reduce the number of people waiting for a hearing and the amount of time it takes to receive a decision on an appeal of a disability denial. The Task Force is aware that testing and implementing promising new initiatives and hiring and training new ALJs and support staff takes time. Many of the promising initiatives contained in the CARES plan are in the very early stages and wait times are increasing as we wait to see the impact these initiatives will have on the backlog. At the same time, despite the \$90 million in anomaly funding SSA received for FY 2017-18, many components of SSA's updated CARES plan have been suspended (for example, pre-hearing conferences, pre-hearing summaries, and the National Adjudication Team) with no indicated date for resuming those activities. Others are only at the pilot stage (e.g. shared scheduling services) and will not have a substantial impact on the backlog or processing time in the immediate or near-term. Because personnel have been reassigned away from the National Adjudication Team to assist with the extensive decision writing backlog, initiatives such as the Senior Attorney Program (where senior attorneys reviewed cases for the possible on-the-record decisions) that have proven successful at reducing the hearing backlog in the past are

effectively not being utilized as part of this effort. The undersigned members of the CCD Social Security Task Force recommend the following actions be taken to assist with decreasing the backlog.

a. Getting the Decision Right at the Initial Level

It is the position of the CCD Social Security Task Force that ensuring that a disability claim file is as complete as possible before the initial decision is made is in the best interest of disability claimants, SSA, and the American public.

Better Case Development By Disability Determination Services (DDS): SSA regulations specify that the agency has the responsibility to “develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.”⁹ The regulations specify that SSA will make two attempts to obtain medical records and will proceed to make a decision without the records if not received after those requests. Claimants representatives routinely report that it takes multiple requests over weeks (and sometimes months) to obtain many medical records and those requests must be “higher touch” (with many calls or visits to medical facilities) than simply sending a written request. In fact, some representatives have hired staff whose entire job is dedicated to obtaining medical records for their clients. The two written requests required by current regulations are insufficient in many cases and cannot be considered “every reasonable effort” given the reality of how difficult it is to obtain medical records. Initial decisions on disability claims are often made without complete medical records as a result. Although the CCD Social Security Task Force appreciates the desire for timely issuance of initial determinations, it is concerning that doing so may come at the expense of obtaining complete medical records. This can lead to a denial that must be appealed to get a decision on a complete record, contributing to the hearing backlog and requiring the claimant to endure the extremely long wait for a hearing. The Task Force encourages SSA to implement an initiative to ensure more complete development of medical records at the initial level.

Information About Representation: Representatives play an important role in obtaining medical and other information to support their clients’ disability claims and helping SSA to streamline the disability determination process. They routinely explain the process and procedures to their clients with more specificity than SSA can. They obtain evidence from medical sources, other treating professionals, school systems, previous employers, and others who can shed light on the claimant’s entitlement to disability benefits. Given the importance of representation, the Social Security Act requires SSA to provide information on options for seeking legal representation, whenever the agency issues a notice of any “adverse determination.” This statutorily required information is typically provided only once the claimant has requested a hearing before an ALJ. SSA should provide claimants with more information on options for representation before and during the initial application process.

Expedited Screening Tools: The CCD Social Security Task Force supports the continued use and expansion of existing tools for expediting disability determinations. SSA already has in place several successful methods of expediting disability determinations for claimants whose conditions are so severe that they clearly meet the Social Security disability standard. These include Quick Disability Determinations (QDDs), Compassionate Allowances (CAL), and terminal illness (“TERI”) cases. CAL allows SSA to quickly identify claimants with extremely severe, often terminal conditions such as certain advanced cancers and life-threatening neurological disorders, that can be adjudicated quickly based on diagnosis without having to complete additional analysis of the impact of the condition on the ability to work. QDDs use a computer-based predictive model to identify cases where a medical eligibility is highly likely and medical evidence is readily available, enabling the state

DDS to expedite case processing. Initiatives such as QDD and CAL allow SSA to review cases more efficiently, while expediting approval for claimants with some of the most severe conditions and illnesses. These initiatives provide people with disabilities facing devastating illnesses the security of knowing that they and their families have income to rely on and removing one worry people face during a very challenging and scary time.

These screening initiatives appear to be identifying disability claims that clearly should receive awards and that involve conditions with a high chance of mortality, as they were intended to do. The SSA Office of Inspector General issued an informational report regarding the implementation of these initiatives last year.¹⁰ The report indicated that of the approximately 82,000 people whose cases were identified for CAL or QDD in Fiscal Years 2008 and 2009, over 96% were eventually awarded benefits. The vast majority, 76,000, were approved without having to appeal, and of those, one in four died within three months of application, more than seven in ten had died by June 2015, and another 20% were still receiving disability benefits.

The CCD Social Security Task Force supports continuation of these initiatives with two critical improvements:

1. SSA should adopt clear criteria for what constitutes a CAL condition. SSA should develop and implement clear, formal, and transparent criteria and procedures to add, continue, and remove CAL conditions.
2. The Task Force also supports improvement of the computer program used to screen cases for potential processing as a CAL claim to ensure all eligible claims are processed under expedited procedures and non-eligible claims are excluded.

To improve the development of cases at the initial level, the CCD Social Security Task Force additionally recommends SSA:

- Provide more assistance to claimants at the application level regarding necessary and important evidence so that all impairments and sources of information are identified, including non-physician and other professional sources. This is especially important for claimants with mental impairments and limited English proficiency.
- Ensure that questionnaires and forms are understandable to claimants and as free of jargon as possible, as well as appropriately tailored to specific types of impairments and probative of information that addresses the disability standard as implemented by SSA. This “language” barrier can lead to incomplete applications missing key details needed for full development of the claim.
- Provide better explanations to medical providers. SSA and DDS forms and questionnaires should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and should ask questions that are probative of evidence and information relevant to the standard. Unclear, hard to understand forms can result in incomplete responses as well as delays in obtaining medical evidence.
- Improve the quality of consultative examinations (CEs). Steps should be taken to improve the quality of the CE process. There are many reports of inappropriate referrals (e.g., to providers with the wrong specialty given the claimant’s condition(s)), short perfunctory examinations, and failure to provide an interpreter for people with limited or no English proficiency during the exam. In addition, there should be more effort to have the treating physician conduct the consultative examination, as authorized by SSA’s regulations.
- 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 CEs and for medical experts who testify at hearings, to ensure availability of qualified medical professionals. Appropriate reimbursement rates would also increase the frequency

with which treating physicians agree to conduct CEs at SSA's request, enabling adjudicators to obtain additional medical evidence from a treating source already familiar with the claimant's condition(s) and medical history.

b. Additional Screening of Denials Earlier in the Process

The CCD Social Security Task Force has two additional recommendations to reduce the number of claims appealing to the hearing level or reduce the number of appeals for which hearings are required.

Increased Targeted Denial Reviews: One way that Congress could help SSA eliminate its backlogs is by expanding the allowable uses of program integrity funding. SSA's Office of the Inspector General lists "reduce disability backlogs and improve decisional quality" among their top management issues for Fiscal Year 2017.¹¹ A disability benefits program with true integrity is one that allows claimants to obtain prompt and accurate determinations.

If Congress included Targeted Denial Reviews (TDRs) in allowable program integrity activities, the agency could increase program integrity while reducing the hearings level backlog. TDRs allow SSA's Office of Quality Review (OQR) to examine unfavorable decisions of disability claims issued by state agencies. Fewer than 3 percent of state agency denials receive TDRs; the number performed varies each year based on resources available to the agency. In comparison, Sections 221 (c) and 1633 (e) of the Social Security Act require SSA to review at least half of the favorable decisions issued by state agencies. In Fiscal Year 2016, 7.7 percent of TDRs resulted in a reversal of an unfavorable decision and the issuance of a favorable decision. That reflects nearly 3,400 individuals with disabilities who were spared the need to wait additional months and years to receive critical benefits. Since the program was fully implemented in Fiscal Year 2012, more than 17,000 cases have been kept out of the hearings-level backlog because of TDR. Allowing SSA to use program integrity funding to perform TDRs would increase the efficiency and accuracy of the disability programs.

Resume Issuing On-The-Record Decisions: It is sometimes the case that a fully favorable decision can be issued on a claim without needing a hearing. There are a number of reasons why an on the record decision is appropriate. For example, a claimant or representative might have been able to obtain additional evidence not available at the time of the DDS decision. Making such an individual wait until a hearing slot is available is cruel and holding a hearing on such a claim is inefficient for SSA. On the record decisions have been helpful in reducing the hearing backlog in the past. As recently as Fiscal Year 2010, senior attorneys issued more than 54,000 on-the record decisions, last year just over 1,000 were issued.¹² As of the end of July 2017, senior attorneys have issued only 686 on the record decisions this fiscal year.

The former Senior Attorney Program allowed senior staff attorneys in hearing offices to issue fully favorable on the record decisions in cases that could be decided without a hearing. Although the Task Force is aware that concerns have been raised regarding issues with the policy compliance of some on the record decisions, the Task Force is not aware of any publicly available study or data regarding these concerns. It is important to remember that a non-policy compliant decision is not necessarily an incorrect decision. SSA has never indicated that any on the record decisions issued by senior attorneys were incorrect (i.e. that they awarded benefits to someone not eligible) and to our knowledge has never used the avenues it possesses to review or reverse decisions they believe to be incorrect. If there have been on the record decisions in the past that did not comply with policy, SSA should provide the training and oversight necessary to ensure program integrity within these initiatives (as they do with ALJs who issue non-policy compliant decisions) rather than abandoning a successful initiative.

c. Recent Regulatory Changes Will Worsen the Backlog

In its revised CARES plan, SSA touts some recent regulatory changes as assisting with backlog reduction. The CCD Social Security Task Force believes some of these regulatory changes have actually had the opposite effect and are contributing to the backlog. The Task Force encourages SSA to consider rescinding these regulatory changes or offering better guidance and clarity on how to implement them, both because of the detrimental effects on claimants and the contribution of these regulations to increasing the hearing backlog.

i. Evaluation of Medical Evidence Rule (elimination of treating physician rule)

SSA issued a final rule revising the rules regarding the way medical evidence will be evaluated and weighed when making a determination of disability that took effect March 27, 2017.¹³ The revised rules eliminated the special weight given to the evidence provided by a claimant's medical treating source. Although the delivery of healthcare may have changed over the years, the relationship between a person and their treating provider remains unique and the opinions of treating providers deserve more weight than the opinion of someone who either examines an individual once or only reviews the claims file. The evidence from a treating source is generally more persuasive because treating providers treat. Providing effective treatment to a person typically requires a much greater depth of knowledge and information than that relied on by professionals merely performing an evaluative function. A provider would not prescribe medication, recommend tests, give advice, refer to a specialist, perform surgery, or provide other treatments unless they found the patient's reports and their own observations and conclusions persuasive enough to require these actions. By putting the evidence of a treating source on the same level of importance with someone who may never have examined the individual, this rule hurts claimants by devaluing the evidence received from treating sources with longitudinal knowledge of the claimant. This rule change, which is likely to be challenged in court, will not lead to more accurate decisions or decrease processing time. Rather, the elimination of the treating physician rule is likely to lead to more appeals, more remands, and more delays.

Similarly, we believe the parts of this final rule that allow SSA to disregard disability determinations of the Veterans Administration and other third parties and limits the explanation decisionmakers must provide when weighing evidence from different sources will also lead to more appeals and remands. The CCD Social Security Task Force raised these concerns in comments on the proposed rule but the final rule did not fully address the issues raised.¹⁴

ii. Program Uniformity or "5-day Rule"

SSA issued a final regulation requiring the submission of or informing the agency about all evidence at least 5 business days in advance of a hearing, subject to some good-cause exceptions.¹⁵ The CCD Social Security Task Force opposed this change for several reasons. SSA indicates in the preamble to the final rule that "a complete evidentiary record is necessary for us to make an informed and accurate disability determination or decision."¹⁶ The Task Force agrees and believes that creating an arbitrary deadline for the submission of evidence will hurt claimants, especially unrepresented claimants, who don't understand their obligations under this rule or have evidence inappropriately excluded in the name of efficiency. In addition, it is the Task Force's position that it is inconsistent with some provisions of the both the Social Security Act and other SSA regulations, as outlined in the Task Force's comments in response to the proposed rule.¹⁷ Finally, the Task Force is concerned that the exclusion of evidence under this rule is leading to more appeals to both the Appeals Council and Federal Court making the backlog worse.¹⁸ Although compliance with the rule was only required as of May 1, 2017, claimants representatives are already reporting significant issues with implementation of the rule and have appealed several ALJ denials as a result of the inappropriate exclusion of important evidence.¹⁹ The CCD Social Security Task Force submitted extensive comments in response to the proposed rule.²⁰

iii. “All Evidence Rule”

SSA revised its rules in 2015 to require claimants and their representatives to submit or inform SSA about all evidence related to the individual’s disability. The CCD Social Security Task Force submitted extensive comments in response to the proposed rule which outline the Task Force’s full concerns.²¹ Unfortunately, many of these concerns have come to pass.

One perhaps unintended consequence of this rule has been the creation of extremely large files which can require extensive amounts of time for SSA ALJs and support staff to review. In addition, SSA has not issued clear guidance to claimants, representatives, and ALJs on what constitutes a duplicate record that does not require submission. The preamble to the final rule indicates that claimants have “the duty to submit all evidence that relates to your disability claim received from **any source in its entirety**,” (emphasis added). Different ALJs define a duplicate in different ways and no guidance has been provided regarding what constitutes a duplicate to clarify what is expected of representatives and claimants so files do not include unnecessary information. If such guidance were provided, an expensive and potentially problematic software program SSA is calling “De-Doop” currently being developed might not be necessary. We are concerned that DeDoop will remove records that should remain in the claimant’s file, such as lab test results that may look similar from page to page but could contain minor but critical differences. Given that SSA’s new rules on the valuation of medical evidence includes a provider’s familiarity with the complete file as one determining factor determining the weight evidence from that provider is given, removing records from one provider that appear in another provider’s records could reduce the weight given to that provider’s opinions. We are also concerned about whether claimants and representatives will have access to the documents that are “DeDooped” and whether they will be part of the administrative record furnished in federal court cases. Advocates have made multiple requests for a demonstration of DeDoop and an opportunity to share these concerns, but SSA staff have rejected them.

Conclusion:

The number of people waiting for a hearing before an ALJ and the long waiting time is unacceptable. Claimants often experience incredible hardship during the delay in getting their claim decided – homelessness, bankruptcy, and sometimes death. SSA needs additional resources to be able to serve all its customers in a timely and accurate manner. The Task Force also urges SSA to take additional steps to ensure that eligible claims are awarded as early in the process as possible by improving the development of evidence earlier in the process and ensuring that claims that do not require a hearing to establish eligibility for benefits are processed without a hearing.

Thank you again for the opportunity to testify. CCD looks forward to continuing to work with the Subcommittee to protect this vital program for people with disabilities.

Submitted on behalf of:

Association of University Centers on Disabilities
Autistic Self Advocacy Network
Community Legal Services of Philadelphia
Easterseals
Justice in Aging
National Alliance on Mental Illness
National Association of Disability Representatives
National Committee to Preserve Social Security and Medicare
National Council on Independent Living
National Disability Institute

National Organization of Social Security Claimants' Representatives (NOSSCR)
National Multiple Sclerosis Society
Paralyzed Veterans of America
Special Needs Alliance
The Arc of the United States
United Cerebral Palsy
United Spinal Association

Endnotes

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- ¹ Rehabilitation Research and Training Center on Disability Statistics and Demographics, 2016 Disability Statistics Annual Report, p. 8, https://disabilitycompendium.org/sites/default/files/user-uploads/2016_AnnualReport.pdf
- ² Social Security Administration, Month Statistical Snapshot July 2017, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/
- ³ Email correspondence with Social Security Administration Office of External Affairs, September 23, 2016
- ⁴ Kathleen Romig, Center on Budget and Policy Priorities, "Cuts Weakening Social Security Administration Services Policymakers Can Address Through 2017, 2018", updated March 15, 2017/2018 Funding, <https://www.cbpp.org/research/social-security/cuts-weakening-social-security-administration-services>
- ⁵ Bonnie Kind, Associate Commissioner, Office of Budget, Social Security Advisory Board Budget Update, January 23, 2017, on file with author
- ⁶ Kathleen Romig, <https://www.cbpp.org/research/social-security/cuts-weakening-social-security-administration-services>
- ⁷ Kathleen Romig, <https://www.cbpp.org/research/social-security/cuts-weakening-social-security-administration-services>
- ⁸ Bonnie Kind, Associate Commissioner, Office of Budget, Social Security Advisory Board Budget Update, January 23, 2017, on file with author
- ⁹ 20 CFR § 404.1512(d)
- ¹⁰ Office of the Inspector General, Social Security Administration, Status of Compassionate Allowance and Quick Disability Determination Expedited Cases, March 16, 2016, <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-16-50051.pdf>
- ¹¹ <https://oig.ssa.gov/audits-and-investigations/top-ssa-management-issues>
- ¹² According to Social Security Administration data, there were 109,428 on the record decisions in FY2010, 55,261 issued by ALJs and 54,186 issued by senior attorneys. On the record decisions constituted 15% of all hearing level dispositions that year. In fiscal year 2016 (through 8/23/16) only 20,113 total on the record decisions were issued, 19,226 by ALJs and 1,187 issued by senior attorneys, constituting only 3% of dispositions. Source: Email correspondence with Social Security Administration Office of Disability Adjudication and Review, August 28, 2017; on file with author
- ¹³ 82 CFR 5844, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00455.pdf>
- ¹⁴ Social Security Task Force, Consortium for Citizens with Disabilities, Comments on the Notice of Proposed Rulemaking on Revisions to Rules Regarding the Evaluation of Medical Evidence, 81 Fed. Reg. 62559, November 8, 2016, <http://c-c-d.org/fichiers/CCD-SSTF-Treating-Physician-Comments.pdf>
- ¹⁵ <https://www.federalregister.gov/documents/2016/12/16/2016-30103/ensuring-program-uniformity-at-the-hearing-and-appeals-council-levels-of-the-administrative-review>
- ¹⁶ 81 FR 45079
- ¹⁷ Social Security Task Force, Consortium for Citizens with Disabilities, Comments on Notice of Proposed Rulemaking on Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process, 81 Fed. Reg. 45079, August 26, 2016, p 2-4, <http://c-c-d.org/fichiers/CCD-SSTF-Ensuring-Program-Uniformity-comments-final.pdf>,
- ¹⁸ Social Security Task Force, Consortium for Citizens with Disabilities, Comments on Notice of Proposed Rulemaking on Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process, 81 Fed. Reg. 45079, August 26, 2016, p 4, <http://c-c-d.org/fichiers/CCD-SSTF-Ensuring-Program-Uniformity-comments-final.pdf>,
- ¹⁹ See, for example, *Howe v Colvin*, 147 F.Supp.3d 5 (D.R.I. 2015), a case from Region I, where the federal court found that he ALJ abused her discretion in refusing to accept evidence submitted less than five days before the hearing, and remanded the case for consideration of this evidence years after the hearing was originally held
- ²⁰ <http://c-c-d.org/fichiers/CCD-SSTF-Ensuring-Program-Uniformity-comments-final.pdf>
- ²¹ Social Security Task Force, Consortium for Citizens with Disabilities, Comments regarding Docket No. SSA-2012-0068, Submission of Evidence in Disability Claims, April 21, 2014, http://c-c-d.org/fichiers/CCD_Comments_evidence_NPRM4-21-2014FINAL.pdf