



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Statement for the Record

**Hearing on
Stay-at-Work and Back-to-Work Strategies:
Lessons from the Private Sector**

Senate Committee on Health, Education, Labor and Pensions

March 22, 2012

Submitted April 3, 2012 on behalf of the undersigned members of the Consortium for Citizens with Disabilities Social Security Task Force and Employment and Training Task Force:

ACCSES

The Arc of the United States

Bazelon Center for Mental Health Law

Easter Seals

Health & Disability Advocates

Helen Keller National Center

Learning Disabilities Association of America

National Alliance on Mental Illness

National Association of Councils on Developmental Disabilities

National Association of Disability Representatives

National Association of States United for Aging and Disabilities (NASUAD)

National Disability Rights Network

National Down Syndrome Congress

National Organization of Social Security Claimants' Representatives

Paralyzed Veterans of America

United Spinal Association

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The Consortium for Citizens with Disabilities (CCD) is a coalition of national organizations working together to advocate for national public policy that ensures the self-determination, independence,

empowerment, integration and inclusion of the 54 million 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 CCD Employment and Training Task Force believes that meaningful employment represents one of the best opportunities for people with disabilities as they work toward becoming independent members in their community.

The undersigned members of the CCD Social Security Task Force and Employment and Training Task Force submit this Statement for the Record of the March 22, 2012 hearing on “Stay-at-Work and Back-to-work Strategies: Lessons from the Private Sector.” Thank you for the opportunity to submit a statement for the record.

We appreciate the Health, Education, Labor and Pensions (HELP) Committee’s ongoing leadership in exploring issues that impact the well-being of people with disabilities in America. The Committee’s March 22nd hearing highlighted private sector strategies to help adult workers who acquire disabilities to remain at work or to return to work. At the hearing, Chairman Harkin asked “What do we do about SSDI?” We applaud and share Chairman Harkin’s interest in strengthening Social Security’s disability programs. Our statement addresses Chairman Harkin’s question, as well as the questions he raised during the hearing about whether lessons learned from the private sector have implications for Social Security Disability Insurance (SSDI).

Social Security Disability Programs Are a Vital Safety Net

The Social Security disability programs, including the Supplemental Security Income (SSI) program and disability coverage in the Old Age, Survivors, and Disability Insurance programs,¹ provide vital and much-needed economic security and access to health care for individuals whose impairments are so severe that they preclude substantial work, given their current circumstances. These income support programs are an integral component of our nation’s safety net, reflecting the core American value of assisting those in need.

Many adults receiving SSDI have made repeated attempts to work, often exacerbating their impairments, before finally turning to Social Security for critical income support. Although some SSDI beneficiaries may have the capacity to increase their employment, and should receive every support and encouragement to do so, available data suggest that a large percentage will not have the capacity for ongoing employment at any significant level. Experience also shows that the disability program beneficiaries who are eventually able to attain a significant level of employment often take a long time to do so and may encounter many “stops and starts” along the way.

¹ This includes all individuals with disabilities receiving benefits through the Old-Age, Survivors, and Disability programs, including disabled workers, surviving disabled spouses, and disabled adult children.

Private Sector Programs and SSDI: Scope of Services and Populations Served

Programs offered by private sector employers include short- and long-term disability insurance that typically replaces about 60 percent of a worker's earnings.² Many employers also offer stay-at-work and return-to-work programs, as well as related services designed to maintain the employment of a worker who acquires a disability. These programs are often offered through or in coordination with their insurers. As noted at the March 22nd hearing, employer programs include a wide range of services such as early intervention, intensive case management, access to support services, continued attachment to employer-based health insurance, and financial incentives for returning to work.

SSDI by law provides monthly cash benefits designed to partially replace the lost wages of workers who are unable to work because of severe, long-term disability. Major differences between private sector disability insurance programs and SSDI include:³

- ♦ **Definition of disability:** Private insurers use a definition of disability that is much broader than the definition used for SSDI. Private insurers typically define disability as an inability to do one's own job (for short-term benefits), or an inability to perform any occupation for which the applicant is qualified (for long-term benefits). SSDI uses a much narrower definition, requiring that a disability be "expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months" and that the person cannot "considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy" (42 U.S.C. § 423(d)).
- ♦ **Covered populations:** Private sector disability insurance programs cover only about one-third of all workers,⁴ and are able to choose the industries to which they market policies.⁵ Workers covered by private disability insurance are most likely to work in management or professional positions, with average wages of \$15 per hour or higher.⁶ SSDI covers a much more diverse population. An estimated 158 million workers, or 94 percent of all workers, are covered under Social Security, and an estimated 91 percent of persons aged 21-64 who work in covered employment would be eligible for SSDI payments if they acquire a disability that meets the strict SSDI standard.⁷
- ♦ **Benefit commencement:** Private insurance benefits typically begin at the onset of disability, or when sick leave has been exhausted. SSDI benefits begin 5 months after a person has been

² Watjen, T.R. Testimony before the Senate Health, Education, Labor and Pensions Committee, March 22, 2012.

³ See page 5, in Owens, P.M. Letter to The Honorable E. Clay Shaw, Jr., Chairman, Social Security Subcommittee, Committee on Ways and Means, U.S. House of Representatives, August 12, 2002. http://www.nasi.org/sites/default/files/research/Owens_final_response_to_Qs.pdf.

⁴ About 37 percent of private industry workers participate in short-term disability benefits, and about 31 percent participate in long-term disability benefits. Table 17. Insurance benefits: Access, participation, and take-up rates, private industry workers, in U.S. Department of Labor, U.S. Bureau of Labor Statistics (2011). National Compensation Survey, <http://www.bls.gov/ncs/ebs/benefits/2011/ownership/private/table12a.pdf>.

⁵ Wagner, C.C., et al. (2000). Older Workers' Progression from Private Disability Benefits to Social Security Disability Benefits. Social Security Bulletin Vol. 63(4), pp. 27-37.

⁶ U.S. Department of Labor, U.S. Bureau of Labor Statistics (2007). National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2007. <http://www.bls.gov/ncs/ebs/sp/ebsm0006.pdf>.

⁷ Social Security Administration (2012). Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program. http://www.ssa.gov/OACT/FACTS/fs2011_12.pdf.

found eligible for the program. Additionally, for some SSDI applicants, approval for benefits may only come several years after the initial application.

- ♦ **Connection with an employer:** Workers receiving private insurance benefits typically continue their connection with their current employer. In contrast, most SSDI beneficiaries no longer have a job to return to.
- ♦ **Access to health insurance:** Employers who provide private disability insurance usually also provide health insurance that continues while a worker receives disability benefits. SSDI recipients must wait for 24 months after being found eligible for SSDI to receive Medicare. Moreover, SSDI applicants include many people who lacked health insurance coverage on their prior job or who lost health insurance coverage when they left their job.

In combination, these significant differences mean that private sector programs serve a large number of people who will never qualify for SSDI, because they do not have disabilities that are expected to result in death or last for at least 12 months, or that are so severe that they are unable to engage in any substantial gainful work that exists in the national economy.

In fact, what is often forgotten is that receipt of Social Security disability benefits is merely the last stop on a long journey that many people with disabilities make from the point of disability onset to the moment at which disability is so severe that work is, at least temporarily, not possible. All along this journey, individuals encounter the policies and practices of the other systems involved in disability and employment issues. When these systems fail to stem the progression of disability or work at cross-purposes with one another to prevent successful employment retention or return to work, it is often the Social Security disability system that bears the eventual brunt of this failure. SSDI often serves as the program of last resort. When private sector programs have been unable to help a person return to work, employers or their insurers often direct workers to SSDI as a cost containment measure.⁸

For these reasons, it is no surprise that SSDI beneficiaries as a group face significant barriers to work. Nearly 70 percent of SSDI beneficiaries in 2010 were age 50 or older and nearly 1 in 3 was age 60 or older.⁹ In a recent National Beneficiary Survey, 46 percent of people receiving SSDI benefits characterized their health as being poor or very poor.¹⁰ Some are terminally ill. In fact, about 1 in 5 male SSDI beneficiaries and 1 in 7 female SSDI beneficiaries die within the first five years of receiving benefits. Additionally, the health of people receiving benefits appears to worsen over time. Nearly 1 in 2 beneficiaries reported in the same National Beneficiary Survey that their health had declined over the past year. Finally, low educational attainment also limits employment opportunities for many beneficiaries: about 67 percent of SSDI beneficiaries have a high school diploma or less (and 30 percent did not finish high school).¹¹

⁸ *Supra* note 5.

⁹ Social Security Administration (2011). 2010 Annual Statistical Supplement to the Social Security Bulletin. Table 5.D4, <http://www.socialsecurity.gov/policy/docs/statcomps/supplement/>.

¹⁰ Livermore, G. et al. (2009). Work Activity and Use of Employment Supports Under the Original Ticket to Work Regulations: Characteristics, Employment, and Sources of Support Among Working-Age SSI and DI Beneficiaries, Final Report. http://www.ssa.gov/disabilityresearch/documents/TTW5_2_BeneChar.pdf.

¹¹ *Supra* note 10.

In contrast, private insurers have opportunities to focus their return-to-work services on individuals most likely to benefit from their services. The U.S. Government Accountability Office surveyed 3 of the largest disability insurers, representing over half of the U.S. long-term private disability insurance market.¹² The insurers reported that a critical factor in increasing return-to-work rates is triage: insurers separate claims by those who are likely to return to work, and those who are not expected to return to work. Claimants identified as unlikely to return to work “are generally managed using a minimum level of resources.”¹³ The insurers also reported that only “between 2 and 3 percent of their long-term disability beneficiaries who also received DI benefits either returned to work or were terminated from the private sector disability benefit rolls because they were assessed as having the capacity to work.”¹⁴

Application of Lessons from the Private Sector to SSDI

It is clear that many of the goals and conditions of private sector disability insurance programs differ sharply from those of SSDI. We believe that as a result, lessons from private sector stay-at-work and return-to-work programs have only very limited application to SSDI. In many cases, successes of the private sector appear to stem from strategies that are tailored to the specific needs, circumstances, and resources of the workers and employers served by private sector insurers. Despite these limitations, two ideas discussed at the March 22nd hearing – creating financial incentives for return-to-work, and ensuring timely access to benefits and services – have promising implications for SSDI. Below, we discuss our support for these ideas, as well as other recommendations that CCD believes would improve opportunities for SSDI beneficiaries to return to work.

Recommendations for Strengthening SSDI

CCD supports new legislative and regulatory proposals that could increase employment opportunities for individuals with disabilities who receive Social Security disability benefits. We believe that the basic structure of SSDI is effective and should be preserved, and that any efforts to change SSDI must protect and expand its effectiveness, as well as protect access to Medicare. Additionally, because the intent of the Social Security disability programs is to provide income support for individuals who do not have the capacity to work, the existing definition of disability is appropriate. The current definition is strict, providing benefits only to individuals with the most significant impairments. The current structure also provides sufficient flexibility to allow for policies that promote employment for beneficiaries who are able to do some work.

We support several ideas discussed at the March 22nd hearing that would expand the effectiveness of SSDI.

First, we strongly support establishing an earnings offset in SSDI, and we thank Chairman Harkin for his discussion of this important proposal at the hearing. One of the most difficult and enduring barriers to work for SSDI beneficiaries is the sudden termination of cash benefits when someone crosses the

¹² UNUMProvident, Hartford Life, and CIGNA. See U.S. Government Accounting Office (2001). *SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts*. GAO-01-153.

¹³ *Supra* note 12, page 34.

¹⁴ *Supra* note 12, page 15.

substantial gainful activity (SGA) threshold. This affects both the individual's benefits as well as those of any dependent(s). CCD recommends establishing a \$1 for \$2 earnings offset in SSDI to parallel the provision in the SSI program. As discussed at the hearing, this would also mirror return-to-work financial incentives used successfully in the private sector. An earnings offset would eliminate the "cash cliff" for beneficiaries who are able to work, and would help ensure that individuals are financially better off by earning wages than by not earning.

Second, the hearing's discussion about the positive impact of timely access to benefits and services highlights the need for the Social Security Administration (SSA) to have adequate administrative resources to effectively administer the SSDI program and complete initial disability determinations in an accurate and timely manner. SSA's administrative budget (Limitation on Administrative Expenses, or LAE) has been inadequate in recent years. We urge Congress to provide SSA with adequate resources to carry out all necessary program functions, including claims processing and disability determinations.

Third, hearing witness Eric Buehlmann highlighted the need to reauthorize the Work Incentives Planning and Assistance (WIPA) and Protection and Advocacy for Beneficiaries of Social Security (PABSS) programs. These two critically important programs help beneficiaries of Social Security disability programs attain economic self-sufficiency. The WIPA programs help beneficiaries understand their options if they choose to return to work, and the PABSS programs protect the rights of beneficiaries as they attempt to work. Authorization for both the WIPA and PABSS programs expired on September 30, 2011. Fortunately, SSA was able to set aside funding to sustain the WIPA program until June 30, 2012 and the PABSS program until September 30, 2012. We support reauthorization of these programs for at least three years.

In addition to the ideas discussed at the hearing, CCD recommends a number of ways to strengthen SSDI to increase opportunities for beneficiaries to return to work. These include the following:

- ◆ Support and strengthen programs designed to allow flexibility for people with disabilities to return to work, including programs authorized under the Ticket to Work and Work Incentives Improvement Act (TWWIA). These programs offer people with disabilities the options to try different work opportunities without risk of losing their benefits should a return to work be unsuccessful. Providing individuals with disabilities the opportunities to work up to their capacity without risking the vital income support and health care coverage promotes their independence and self-sufficiency.
- ◆ Provide a "continued attachment" to SSDI and Medicare, as long as a beneficiary's impairments last. Beneficiaries who are sometimes able and other times unable to be employed should have continued attachment to cash and medical benefits that can be activated with a simple and expedited procedure that is as "seamless" as possible. For example, SSA has proposed the Work Incentives Simplification Pilot (WISP). Under the WISP, work would no longer be a reason for terminating SSDI benefits. SSA would continue to pay cash benefits for any month in which earnings were below the established threshold, but would suspend benefits for any month in which earnings were above the threshold. SSA would evaluate if this pilot simplification reduces the number of improper payments due to work, and allows the agency to redirect those administrative resources to other areas.¹⁵

¹⁵ Statement of Carolyn Colvin, Deputy Commissioner for Social Security, before the Committee on Appropriations

- ◆ Revise rules for impairment-related work expenses (IRWE). Under current rules, beneficiaries can deduct from earned income the costs of IRWEs; IRWE deductions are made for SGA determinations. The IRWE deduction can be a significant work incentive by allowing individuals with disabilities to obtain services, medical items, and other assistance that allow them to engage in work activity. CCD proposals for revising IRWE include:
 - Apply the current SSI blindness rule to SSDI disability claimants and beneficiaries to allow the consideration of all work expenses, not only those that are “impairment-related.” For Title II and SSI disability claimants and beneficiaries, only those work expenses that are “impairment-related” are considered. However, the SSI income counting rules for individuals who qualify based on statutory blindness are more liberal because all work expenses can be deducted, not only those that are “impairment-related.” There is no public policy basis for this continued disparate treatment of people with different significant disabilities.
 - Allow beneficiaries to include their health insurance premiums as IRWEs. This would recognize the higher costs incurred by workers with disabilities who must pay premiums for the Medicaid Buy-In or for continued Medicare after the termination of free Part A benefits.
- ◆ Reinstate SSA’s Title II Demonstration Authority and the Demonstration to Maintain Independence, which expired in 2005. The agency’s disability demonstration projects can provide important information about assisting beneficiaries to attempt or return to work, and current demonstrations have been allowed to continue. While we recognize that improvements need to be made in the way SSA uses the results of its demonstrations, without this authority, the agency is unable to pilot test other promising approaches for work incentives and related provisions.

For a full list of CCD recommendations on strengthening all of Social Security’s disability programs to enhance opportunities for work, see the September 23, 2011 testimony of Cheryl Bates-Harris, Senior Disability Advocacy Specialist, National Disability Rights Network, on behalf of the Consortium for Citizens with Disabilities Employment and Training Task Force, at a joint hearing of the House Committee on Ways and Means Subcommittee on Social Security and Subcommittee on Human Resources on Work Incentives in Social Security Disability Programs, available at <http://waysandmeans.house.gov/UploadedFiles/TTWWIIATest.pdf>.

Conclusion

Thank you for the opportunity to submit a written statement for the record of the March 22, 2012 hearing on “Stay-at-Work and Back-to-Work Strategies: Lessons from the Private Sector.” We are grateful for the HELP Committee’s attention to this important topic, and look forward to continuing to work with the HELP Committee to enhance the economic security and employment of people with disabilities.