



Hearing on Processing of Attorneys' Fees by the Social Security Administration

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Subcommittee on Social Security
House Committee on Ways and Means

Testimony of

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ON BEHALF OF:

American Association on Mental Retardation
American Association of University Affiliated Programs
American Council of the Blind
American Network of Community Options and Resources
Association for Persons in Supported Employment
International Association of Psychosocial Rehabilitation Services
National Alliance for the Mentally Ill
National Association of Developmental Disabilities Councils
National Association of Protection and Advocacy Systems
NISH
National Mental Health Association

National Organization of Social Security Claimants' Representatives
Paralyzed Veterans of America
The Arc of the United States
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Chairman Shaw, Congressman Matsui, and Members of the Subcommittee, thank you for this opportunity to testify about the collection of attorneys' fees in the Social Security disability programs.

I am Director of Legal Advocacy for The Arc of the United States. I am testifying here today in my role as co-chair of the Social Security Task Force of the Consortium for Citizens with Disabilities. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force focuses on disability policy issues and concerns in the Supplemental Security Income program and the Title II disability programs.

The CCD Social Security Task Force urges the Subcommittee to support a statutory change that would allow SSI claimants to voluntarily enter into an agreement with attorneys for SSA to withhold and provide direct payment of attorney's fees from their past due SSI benefits. The CCD Social Security Task Force supports such a provision because it will help ensure that claimants have adequate representation to appeal their cases. The reasons behind the withholding and direct payment of attorneys' fees in Title II cases apply with equal force to SSI cases.

The disability determination and adjudication system is a complex, multi-level process, involving the evaluation of medical and vocational factors. The process simply is too complicated for many claimants to navigate on their own. Often claimants seek representation only after their own efforts to pursue applications have resulted in denial of their claims.

However, because there is no direct payment of attorneys' fees in SSI cases, many attorneys are unable to provide representation in these cases. Since SSI benefits cannot be attached, an attorney cannot collect a fee from a successful client if the client has only SSI income and does not pay. Due to the resulting limited number of attorneys willing to take SSI cases, claimants with significant physical and mental impairments who are in difficult financial circumstances are often left to fend for themselves with SSA.

We recognize that there may be reluctance to consider the withholding of attorneys' fees from SSI claimants, who, by definition, have extremely low income and assets, if any. In fact, many members of the CCD Task Force have concerns

about an SSI beneficiary's loss of a significant portion (up to 25 percent) of a back-benefits payment. Further, it could be argued that SSI claimants would be better off using pro bono legal services or relying on legal services attorneys or protection and advocacy system attorneys to pursue their claims.

The CCD Social Security Task Force has seriously considered these concerns. However, we believe that the individual's potential loss of eligibility and future benefits due to a lack of experienced legal representation is a far greater harm or burden than the payment of reasonable attorneys' fees out of the back benefit. Further, we strongly support the valuable service that legal services and protection and advocacy programs can provide SSI claimants in offering representation and do not see this proposal as affecting their efforts in any way. Since legal services and P&A system resources, as well as the availability of pro bono legal services, are significantly limited, we concluded that SSI claimants would benefit from voluntary access to the attorneys' fee payment system, as an additional resource, especially where they have been unsuccessful in finding legal assistance elsewhere. Given low income and resources and the limited ability of many SSI claimants to successfully pursue their own claims, we can see no compelling reason not to create parity in the payment system, especially since many individuals could be eligible for SSI, Title II, or both, depending upon when they apply.

The withholding and direct payment mechanism in the Title II program has helped to ensure that there is a pool of private attorneys who are willing and have the expertise to pursue claimants' cases. We urge you to establish a similar mechanism in SSI cases to provide these claimants with the same opportunity to obtain representation and the benefits to which they are entitled.

Thanks you for this opportunity to testify. I would be happy to answer any questions you may have.