



SOUTHEAST LOUISIANA
LEGAL SERVICES
Free Legal Aid for Low-Income People

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Administrative Conference of the United States
1120 20th Street NW, Suite 706 South
Washington, DC 20036

*Via electronic mail only to
info@acus.gov*

RE: Comments Regarding Identifying and Reducing Burdens in Administrative Processes

To Whom It May Concern:

Southeast Louisiana Legal Services (SLLS) is the largest provider of free civil legal aid in southern Louisiana, including the New Orleans and Baton Rouge metropolitan areas. SLLS represents clients before federal agencies like the Social Security Administration. The below list outlines the administrative hurdles facing individuals, especially those without legal representation.

I. The Social Security Administration's procedures for the PERC delay and deny benefits to eligible SSI claimants.

Social Security field offices conduct a Pre-Effectuation Review Conference (PERC) with claimants after Disability Determination Services approves their claims for Title XVI Supplemental Security Income (SSI). Claimants cannot receive their SSI benefits until they complete the PERC process. The PERC usually happens by phone or by in-person appointment.

Local field office PERC procedures create barriers for claimants. Many SSI claimants lack transportation to get to field offices. Some do not have enough saved minutes for interviews over the phone. Others do not have a phone at all.

These problems with the PERC process result in delays and even denials for SSI claimants already found eligible for benefits. Claimants who are unhoused are disproportionately affected by these barriers. Most subsidized housing programs, like housing vouchers and public housing complexes, require recipients to prove that they can pay for the utilities of their unit. If a housing subsidy recipient has no income—as is the case for SSI claimants SSA has yet to begin



paying— then the recipient can only use the housing subsidy they’ve been awarded for a unit where all the utilities are included. Such units are exceedingly rare compared with units where recipients pay for their own utilities. If a housing subsidy recipient has a monthly income, their search for housing is more likely to be successful. Thus, the delays caused by the PERC process can needlessly result in a claimant remaining unhoused for a longer period of time.

Our firm has represented multiple clients whose benefits were held up for weeks or months because it was so challenging for them to complete the PERC. People miss PERC appointments for many reasons outside of their control, even with our assistance. Repeated missed appointments often result in denials by Social Security for these claimants’ “failure to cooperate.” These denials lead to appeals (and added processing times) to preserve these claims. Claimants unable to complete a PERC within twelve months of their disability determination lose their favorable decision altogether and must restart the application process from the beginning. Even for those who are able to complete their PERC, SSA’s policies result in delays to those claimants accessing funding for basic food and shelter.

Allowing claimants or their representatives to submit information normally collected by the PERC via written correspondence would avoid the need to reschedule missed appointments. This procedure could be implemented in any claim where the claimant has missed their initial PERC appointment.

SSA policy already provides for a written substitution to PERC appointments: (1) SSA’s Program Operations Manual System (POMS) instructs its staff to use a publicly available form (Form SSA-8203-BK) to collect PERC information¹; (2) the Code of Federal Regulations allows representatives or claimants to make reports of relevant information—including information collected in the PERC—via written correspondence²; and (3) there is no governing body of law that requires SSA to complete PERCs via in-person or telephonic interviews. Read together, these policies allow for procedures that would reduce SSA’s administrative workload. Allowing a claimant to submit their initial responses via a written form and scheduling a phone or in-person interview only where needed for clarification would reduce the number of interviews needed overall.

Thus, SSA can mitigate administrative burdens and increase benefit accessibility by streamlining the PERC process for both SSA representatives and claimants as outlined above.

¹ POMS SI 00603.036(B)(1).

² See 20 C.F.R. §§ 416.712(a), 1510(a)(2).

II. Working conditions for Disability Determinations Services staff are adding to delays in claims processing.

According to a recent internal report,³ examiners at Disability Determination Services (DDS) are experiencing unprecedented demands with stagnant compensation. As described there, individual disability claims have become more complex as (1) claimants have more treatment records than in past years, (2) individual examiners are responsible for more adjudications than ever before, and (3) examiners lack necessary assistance to complete secretarial duties that take time away from their adjudicative responsibilities.⁴ These factors, in combination with DDS compensation failing to keep up with that of less demanding positions in the same markets, have resulted in markedly higher levels of staff attrition than in years past, in turn exacerbating the issues with delays in case processing and outsized caseloads for individual examiners.⁵ The burden on DDS to maintain updated medical evidence and to comb through hundreds and thousands of pages to find specific tests or functional information has resulted not only in delays, but in less accurate decisions.⁶

The report outlines several possible solutions to these issues.⁷ At root, though, DDS offices nationwide need more staff generally and to increase compensation to better draw qualified candidates away from comparable positions elsewhere.

III. Increasing MySSA's functionality would streamline SSA and DDS procedures, maximize efficiency, and minimize costs.

The MySSA online portal allows claimants to check the status of their disability claims, but it does not allow them to submit any correspondence (such as medical records or function reports) to SSA or DDS. Conversely, claimants' representatives have access to their clients' electronic folders via SSA's Electronic Records Express (ERE). Through the ERE, representatives can submit medical records, report forms, etc., allowing for efficient communication and case handling for representatives and SSA/DDS staff.

With the proliferation of devices like personal computers and smartphones, increasingly more medical facilities are giving patients electronic access to their own treatment records at no cost. Without an electronic means of submitting documents to the SSA, unrepresented claimants

³ Nat'l Council Disability Determination Dirs., *Report on National Trends and Common Issues for DDS Agencies*, FED. NEWS NETWORK, https://federalnewsnetwork.com/wp-content/uploads/2022/12/FY22_July_DDS_Survey.pdf (last visited Apr. 11, 2023).

⁴ *E.g., id.* at 1. Indeed, “[t]he amount of medical evidence per case for many states has doubled to quadrupled in the last 12 years.” *Id.*

⁵ *See id.* at 6.

⁶ *Id.* at 14.

⁷ *Id.* at 8–9.

would have to pay printing costs to be able to submit these electronic documents to SSA via fax or mail. For some claimants, these costs will prevent them from ever submitting these documents themselves, forcing DDS staff to request—and SSA to pay for—such records instead. DDS routinely faces difficulties obtaining claimants' records, as facilities refuse to answer DDS requests with inaccurate dates or biographical information. DDS staff can also mistakenly send requests to the wrong providers. These errors can result in months-long delays in processing claims, and they could be avoided by giving claimants the ability to submit electronic records themselves.

Adding the functionality of online submissions through MySSA would also allow claimants to easily and quickly submit report forms (e.g., function reports, work history reports, and pain questionnaires) to DDS instead of relying on faxing or mailing in their responses. This could save DDS the costs related to reminder correspondence when claimants fail to respond within DDS's initial, ten-day deadlines.

Therefore, allowing claimants to submit these and other materials via MySSA would bring parity between represented and unrepresented claimants, increase unrepresented claimants' accessibility in communicating with SSA, decrease costs and workloads for SSA and DDS staff, and allow for more convenient submission of documents claimants originally receive in electronic format.

IV. DDS uses unreasonably short deadlines for its requested report forms.

When DDS requests information from claimants, it provides claimants ten days to respond and complete the forms the agency requests in developing their claims. Because of mailing delays, all claimants and representatives usually receive DDS's requests after several days of the ten-day window have passed. Many claimants have difficulty meeting these short deadlines, particularly unrepresented claimants experiencing mental limitations, cognitive disabilities, and/or unstable housing. Claimants who are unhoused or unstably housed often use a different mailing address than the address where they sleep, so they may not receive DDS's request until the ten-day window has already expired.

DDS's internal delays, combined with the regular U.S. Postal Service delays, cause requests to arrive to claimants without sufficient time to comply. For example, if a claimant with cognitive limitations receives a request from DDS to complete a report with less than a week to respond, the claimant may not be able to find the assistance they need to timely complete the form. Many claimants experiencing mental limitations seek assistance from their social services providers to understand their mail and to complete such forms, but it is often not possible for them to schedule these appointments with less than one week's notice.

These timelines and procedures are inconsistent with the allegations many claimants make in applying for disability benefits—namely, that they are unable to maintain employment (i.e., that they are disabled) in part because their conditions make them unable to comply with such short deadlines. Some claimants suffer claim denials after only two attempts by DDS to receive these reports within these ten-day windows. Improper denials for claimant’s failure to cooperate result in a higher number of appeals, further adding to the number of claims DDS must handle.

V. DDS adds to the administrative burdens of claims processing by ordering consultative examinations when claimants’ files already contain sufficient medical evidence for a determination.

Where a claimant’s treatment records do not provide sufficient information for an adjudicator to determine that claimant’s disability status, DDS may require the claimant to attend a consultative examination (CE) by a third-party examiner paid for by SSA. DDS staff require CEs even where claimants’ files have recent treatment records containing the exact exam DDS is ordering. For instance, DDS orders CEs for mental status exams even for claimants receiving regular mental status exams from their own providers. DDS likewise orders physical examinations for claimants whose own primary care doctors and specialists regularly provide them. In southeast Louisiana, CEs have functionally become a matter of course for disability claimants.

This practice directly violates SSA’s policies,⁸ and it needlessly inflates DDS’s administrative burden in developing the claim. Further, CEs bring the risk that a claimant will fail to attend their appointments, which can result in a denial for “failure to cooperate” with DDS.⁹ There is an inherent conflict created by requiring claimants with limitations that cause difficulties attending appointments to prove that they are disabled by attending appointments.

Attending CEs normally requires arranging transportation to and from the hired examiners’ offices and/or the ability to make remote arrangements with the examiner, where appropriate. Many claimants—including most of our clientele—lack these resources. Claimants with Medicaid may be able to secure free transportation via their Managed Care Organizations (MCOs), but this transportation is not reliable. Additionally, many MCOs refuse to provide transportation to CEs because they are not medically necessary appointments.

⁸ See POMS DI 22510.006(A) (“Do not purchase a CE when the existing evidence is sufficient and consistent enough to adjudicate the claim.”), (B) (“Do not purchase a CE for diagnostic tests or procedures already performed by a medical source when there is no evidence to indicate a change to the claimant's condition.”).

⁹ See POMS DI 23007.001.

Worse still, these problems have come with no perceivable administrative benefits. DDS's internal reporting reveals that its decisions have become less accurate in the last several years as case processing times have ballooned.¹⁰ Our clients have reported experiencing CEs with examiners who are cursory, fail to consider relevant information reported by claimants, and misrepresent their findings to claimants' detriment.

A reevaluation of DDS's procedures regarding CEs would diminish DDS staff workloads, reduce the number of denials for claimants who fail to attend appointments, and increase the accuracy of disability determinations by omitting examination reports with higher likelihoods of containing falsehoods and inaccuracies.

VI. SNAP application requirements are needlessly onerous.

Supplemental Nutrition Assistance Program (SNAP) applications in Louisiana are sixteen pages long with an additional six pages of instructions. These forms require many pieces of information (e.g., income, housing costs, and medical expenses) to be verified with supporting documentation before claimant households receive their benefits. These same conditions hold true across most states.

The SNAP application forms are unreasonably burdensome for claimants. When compared to other federal programs, SNAP forms require more information and supportive documentation than programs that provide larger amounts of assistance for non-essential needs, such as higher education. The federal application for student aid (FAFSA) is six pages long with another four pages of instructions. Very little of the information applicants submit is independently verified prior to disbursement. The maximum award for a Pell Grant—\$822 per month over a nine-month academic year—far exceeds most SNAP households' monthly benefit amount. As such, Pell Grants present a greater risk of awarding higher monthly benefits to ineligible claimants than the SNAP program.

The SNAP program's greater verification demands are thus unnecessary, and they come at great cost. If an eligible claimant is prevented from obtaining SNAP benefits because the forms are inaccessible, that claimant is likely to have difficulty meeting their nutritional needs. The substantial burden on claimants to complete these forms prevents eligible recipients from accessing these life-saving benefits.

¹⁰ See generally Nat'l Council Disability Determination Dirs., *supra* note 3.

Thank you for your attention to our comment. Please let us know if you have any questions, concerns, or would like any further information about our suggestions. Our contact information is included with our signatures below.

Sincerely,

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