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Committee on Adjudication
Administrative Conference of the United States
1120 20th St., NW
Suite 706 South
Washington, DC 20036

Dear ACUS Committee on Adjudication:

These comments are submitted to the Committee on Adjudication (Committee) of the Administrative Conference of the United States (ACUS) as public comments on the March 3, 2013 Draft Report *Achieving Greater Consistency in Social Security Disability Adjudication: An Empirical Study and Suggested Reforms* (Consistency Report)

Proposed Requirement for Pre-Hearing Briefs in Every Case

There is substantial concern about the *Consistency Report's* recommendation to universally require attorneys to submit exhaustive pre-hearing briefs. We attorneys must use our best judgment about how to prepare for and present our clients' cases to a judge. This, in large part, depends on knowing the practices and preferences of judges. Some judges welcome briefs, others do not. Some judges welcome attorney participation in hearings, others do not. Some judges welcome on the record (OTR) requests (that require briefing), others ignore them. We attorneys must marshal our time and efforts in ways that we deem most productive. Requiring a brief in every case is unworkable. It is suggested that if there is to be a requirement for an exhaustive brief in every case, that mandate should be accompanied by a substantial increase in the maximum allowable attorneys' fee because such a brief can require up to two full days to complete.

Proposed Elimination of Right of Appeal to the Appeals Council

Decisions of ALJs are not 100% error free. ALJs do make mistakes, sometimes factual, sometimes legal, and sometimes both. The Appeals Council can and does agree that errors occurred in cases and remands those cases for further action. This is consistent with the guarantee of due process, and elimination of this right of appeal would make a mockery of due process.

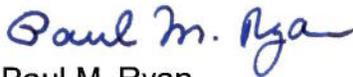
Proposed Elimination of Reconsideration Level

While it is true that the reconsideration process is largely a function of rubber stamping an initial determination, it is strongly suggested that a better process be instituted for the initial determination review. While more development time may provide for more efficiency, that process is rife with its own problems that need correction for the process to work most effectively:

1. The process needs to eliminate medical experts who rush through case files to earn bonuses for more than seven reviews per day. The emphasis needs to be on careful and thorough reviews.
2. The process must insure a roster of contracting providers who actually have relevant expertise vis-à-vis an applicant's illness or injury.
3. The process must insure a roster of contracting providers that are neutral rather than those whose findings are routinely the same regardless of obvious disabling conditions of those whom they evaluate.
4. DDS staff must be monitored for failures to obtain medical information.
5. Mechanisms need to be in place for attorney full participation in the process from the beginning of the review process, i.e. access to the electronic file, facilitation of communication among lawyers, SSA and DDS staff; and informal dispute resolution processes at a minimum.

Thank you for considering these comments.

Sincerely,



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cc: NOSSCR