



Recommendation 78-2

Procedures for Determining Social Security Disability Claims

(Adopted June 8-9, 1978)

For at least two decades the Social Security Administration's hearings and appeals processes, particularly those for determining disability claims which account for 90 percent of all hearings, have been the subject of study, debate, and critical comment. Suggestions for improvement of these processes abound. It has been proposed that social security hearings be exempted from the formal hearing requirements of the Administrative Procedure Act; that administrative law judges not be used to decide these cases: that the decisions be made not after "hearing," but after "examination" by a panel of experts; that the hearing process be retained, but made fully adversary; that one or another level of agency review be abolished; that judicial review be precluded or shifted to magistrates or to an article I court; that the substantive standard be changed, or at least sharpened by the development of regulations or precedent decisions.

The National Center for Administrative Justice has recently concluded the most comprehensive study yet undertaken of the social security hearings and appeals system. In developing the present recommendations, the Administrative Conference has reviewed and built upon that study, the general conclusion of which is that, given existing information, the more dramatic proposals for reform of the system are inadvisable. While the problems that have been identified by others do in various degrees infect the social security hearings and appeals system, the difficulties are not so overwhelming that the proposal of a markedly different system is required. Hence the recommendations that follow are for the most part interstitial and conservative. Their purpose is to prescribe improvements while reinforcing sound practice.

Recommendation

A. Decisional Body

1. The use of administrative law judges appointed in conformity with the Administrative Procedure Act to decide disability claims should be continued.



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2. The Bureau of Hearings and Appeals (BHA) possesses and should exercise the authority, consistent with the administrative law judge's decisional independence, to prescribe procedures and techniques for the accurate and expeditious disposition of Social Security Administration claims. After consultation with its administrative law judge corps, the Civil Service Commission, and other affected interests, BHA should establish by regulation the agency's expectations concerning the administrative law judges' performance. Maintaining the administrative law judges' decisional independence does not preclude the articulation of appropriate productivity norms or efforts to secure adherence to previously enunciated standards and policies underlying the Social Security Administration's fulfillment of statutory duties.

B. Evidentiary Development

1. Although evidence must sometimes be collected after the administrative law judge hearing, prehearing development often may be necessary for an informed and pertinent exchange at the hearing. Administrative law judges should not therefore adopt an invariant policy of post-hearing development, but should develop the record during the prehearing stage whenever sound discretion suggests that such development is feasible and useful.

2. The Bureau of Hearings and Appeals should experiment with wider use of prehearing interviews as a means for case development and in order to provide increased opportunity for grants of benefits without the necessity of a hearing. Due regard should be paid to the convenience of the claimants and to the need for a suitable record of such interviews.

3. Better use should be made of treating physicians as sources of useful information. In this regard, the Bureau of Hearings and Appeals should make more frequent use of available, standard-form questionnaires to treating physicians. And when the Bureau of Hearings and Appeals finds that consulting physicians' reports conflict with evidence supplied by treating physicians, it should inform claimants of the opportunity to have their treating physicians comment in writing on the consulting physicians' reports.

4. The Bureau of Hearings and Appeals should make better use of claimants as sources of information by: (a) Providing them with available State agency reasons for denial; (b) providing notice of the critical issues to be canvassed at the hearing; and (c) engaging in careful and detailed questioning of the claimant at the hearing.



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5. In the absence of regulations structuring the administrative law judge's discretion when evaluating vocational factors, administrative law judges should take official notice at the hearing of vocational facts that can be established by widely recognized documentary sources or on the basis of agency experience.

6. When vocational experts are called as witnesses they should be examined in detail concerning: (a) The claimant's job-related skills; (b) the specific jobs that exist for persons with the claimant's skills and functional limitations; and (c) the number and regional location of jobs that the claimant can perform.

7. Claimants should not be asked to waive their rights to see evidence developed after the hearing.

8. Congressional inquiries should be processed by Bureau of Hearings and Appeals offices in a manner that will avoid any suggestion of preferential treatment of claimants either in the scheduling or outcome of hearings.

C. Monitoring, Management, and Control of the Hearing Process

1. The Appeals Council should exercise review on the basis of the evidence established in the record before the administrative law judge. If a claimant wishes to offer new evidence after the hearing record has been closed, petition should be made to the administrative law judge to reopen the record. Where new evidence is offered when an appeal is pending in the Appeals Council, the Appeals Council should make that evidence a part of the record for purposes of the appeal only if a refusal to do so would result in substantial injustice or unreasonable delay.

2. The Social Security Administration should devote more attention to the development and dissemination of precedent materials. These actions include: (a) Regulatory codification of settled or established policies; (b) reasoned acquiescence or non-acquiescence in judicial decisions; (c) publication of fact-based precedent decisions; (d) periodic conferences of administrative law judges for discussion of new legal developments or recurrent problems.

3. The Bureau of Hearings and Appeals should continue an aggressive quality assurance program to identify errors, determine their causes and prevent their recurrence.



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D. Judicial Review

When seeking a "Secretary-initiated" remand, pursuant to section 205 of the Social Security Act, the Secretary should state the reasons for each request.

E. Representation

1. Bureau of Hearings and Appeals offices should fully inform claimants prior to the hearing of the availability of counsel and lay representation and of the means by which they may obtain counsel or representation in their local area on a fee or no-fee basis.

2. The Bureau of Hearings and Appeals should assist and cooperate with appropriate organizations in the development of training programs for attorneys and lay representatives.

Citations:

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