



Recommendation 87-6

State-Level Determinations in Social Security Disability Cases

(Adopted December 17, 1987)

In Fiscal Year 1986, nearly two and one half million individuals applied for disability benefits under two federal programs administered by the Social Security Administration: Retirement, Survivors, Disability and Health Insurance (RSDHI), and Supplemental Security Income (SSI). Payments made annually to their seven million beneficiaries totaled twenty-nine billion dollars during that period. Certain aspects of this enormous benefit program have recently been subject to close scrutiny to determine whether greater efficiency is possible.

In order to be eligible for either program, a claimant must meet medical and other criteria. The RSDHI program operates as an insurance plan. A worker qualifies by earning a sufficient amount of wages for a required period of time. By contrast, the SSI program is a welfare program whose non-medical criteria are met by a demonstration of need.

If a claimant meets the criteria for either plan, he or she must then meet the medical criteria for disability in order to establish eligibility for benefits. The basic statutory test is identical for both RSDHI and SSI:

"Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can 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. 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). [See also 42 U.S.C. § 423(d)(2)(A) which liberalizes the work requirement somewhat.]"

Claimants begin the application process by filing an application at a Social Security Administration office. If a claimant meets the non-medical criteria, the file is then forwarded to a federally funded and SSA-regulated state Disability Determination Service (DDS) for a determination as to disability. A two-person team consisting of a "disability examiner" and medical consultant (a physician employed by DDS) reviews the medical evidence and reaches its decision. The claimant is not present at any time during the process.

A claimant who is dissatisfied with the initial determination (about 60% are denials) has 60 days in which to seek a reconsideration. Reconsiderations are also performed at the state DDS



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level, and are essentially a repeat of the initial determination process, but with different personnel acting as decisionmakers. The record may be supplemented at this time, but as with the initial determination process, the claimant does not appear. In FY 1986, about 40% of denied claimants (totaling 380,000) sought reconsideration and about 17% of those received favorable re-determinations.

Further review is available at the ALJ and Appeals Council stages. See Recommendation 87-7 for a description of these later review stages.

Several areas pertaining to the disability determination, hearing and review process have been subject to criticism. First, the current system, with its four tiers of successive review, often results in the replacement of one decisionmaker's determination with that of the next, but without necessarily improving the quality of any of the actual decisions. Second, because there is little cost to filing an administrative appeal (and everything to gain in doing so), there is correspondingly little incentive for a claimant to accept any unfavorable determination as final. Accordingly, there is a wide stream of cases all the way to the end of the process. Moreover, claimants whose cases are decided without a personal appearance before the decisionmaker (as is the case in three of the four review stages) frequently feel dissatisfied with the process, that they have not received their "day in court."

In addition, courts, members of Congress and the system's clients have all indicated that their confidence in the system has deteriorated to the point that its integrity has suffered. The public's faith in the institution is essential to its success in the long run.

In efforts to improve the administration of the state-level determination process, the stage at which the caseload stream is the widest, Congress and SSA have engaged in some modifications of the system as well as some experimental procedures. By 1983, a large increase in appeals from terminations of benefits in continuing disability review (CDR) cases had begun to flood the system. In such cases SSA performs reviews on existing beneficiaries to determine whether the disability still exists. If the determination is negative, a notice of termination is sent, triggering the above-described review process. Congress reacted to this by passing Pub. L. 97-455, which gave the option to claimants of an "evidentiary hearing" at the reconsideration stage in all CDR cases. Although a moratorium in CDR cases slowed the institution of this procedure, it is now in place and specially trained hearing officers are conducting these relatively formal proceedings.



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In 1984 (Pub. L. 98-460), Congress mandated demonstration projects in selected DDS offices to try a one-step proceeding, allowing a personal interview but eliminating the reconsideration step. In five states, the interview was to be used in initial determinations, and in five other states it was to be used in place of the evidentiary hearing in CDR cases. These demonstration projects are currently underway, and results are limited. Although preliminary, the experience with evidentiary hearings and the demonstration projects with personal interviews give rise to the following conclusions:

—Face-to-face procedures are more satisfactory to claimants than are paper reviews, resulting in claimants feeling that they received a fair hearing;

—Face-to-face procedures are helpful to decisionmakers, in many instances providing them with evidence not ascertainable from the paper file.

If the final results of the demonstration projects are consistent with these initial findings, it is probable that by implementing some kind of a face-to-face proceeding at the state level, awards of benefits that ultimately would be made later in the system will be made at the outset. This will have the effect of decreasing the caseload at later levels, both for ALJs and the Appeals Council, and for federal courts. Overall costs to the system would thereby be reduced as well.

At the request of the Social Security Administration, the Administrative Conference has undertaken a preliminary review of the disability determination process at the state level. The Conference makes the following Recommendations, based on that study.

Recommendation

The Conference supports Congressional and Social Security Administration (SSA) efforts to improve the procedure by which initial and reconsidered disability determinations are made by state Disability Determination Service (DDS) offices. Although existing experience with use of evidentiary hearings at reconsideration is sparse, and experiments using a single-step determination (after a personal interview, but without reconsideration) are at an early stage, some preliminary suggestions can be made to SSA:

1. Experiments and demonstration projects concerning use of face-to-face procedures at the initial determination stage should be continued and encouraged. SSA should conduct thorough



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and careful evaluations of both the evidentiary hearing procedure now used in continuing disability review (CDR) cases and the personal interviews now being tried in selected state demonstration projects and should make prompt reports to Congress.

2. Full implementation of evidentiary hearings (for other than CDR cases) or personal interviews (either at the initial or reconsideration stage) should await the final report on the current experiments by the Department of Health and Human Services (HHS).

3. HHS's reports concerning the use of face-to-face procedures should include consideration of the cost of full implementation of evidentiary hearings or personal interviews at the initial or reconsideration stage. Should cost considerations militate against full implementation of such hearings or interviews, SSA should consider the feasibility and fairness of permitting some kind of a hearing or interview on a discretionary basis subject to appropriate published guidelines where either the claimant's file, type of medical condition or the opinion of the examiner indicates that such a procedure would be of significant assistance to the ultimate determination.

4. In analyzing the results of the procedures and the ongoing experiments at the DDS level, SSA should develop accurate measures of efficiency and associated record-keeping requirements. Specifically, such measures of processing time should take into account post-interview time expended waiting for third party responses to requests for additional case development. Any measures of efficiency adopted by SSA should not serve to discourage the use of comprehensive interviews.

5. In analyzing the procedures and ongoing experiments (and in any) future analyses), SSA should review the reasonableness of variations between DDS offices in their award rates and other aspects of case handling, in light of state-by-state variables that can affect the disability determination process.

6. SSA should proceed with caution before taking the position that face-to-face hearings or interviews at the DDS level would be an adequate substitute for the opportunity for an adjudicatory hearing before a SSA administrative law judge (ALJ). Rather, such modifications to the DDS process should be seen as a possible way of reducing the number of appeals to the later stages of the process.

7. Close scrutiny should be given to any legislative or other proposals to completely eliminate the reconsideration stage, taking into account the impact of that step on overall



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processing costs, and on the caseload at the ALJ stage. Any such proposals to convert the two DDS stages into a single stage should consider the need to allow some type of a face-to-face proceeding at that stage, as provided for in the demonstration projects.

8. Before instituting evidentiary hearings (for other than CDR cases) or personal interviews in all DDS offices, SSA should consider (a) decentralization of DDS offices into decisional units to minimize travel costs and (b) the need to select and train a sufficient number of personnel qualified to conduct such hearings or interviews.

9. The record in disability appeals should not be closed until completion of the ALJ stage—that point in the process at which claimants now are more likely to be represented by attorneys or other advocates.

10. SSA should conduct a study of: (a) the reference sources of claimants (e.g., referrals from state welfare agencies, private insurance carriers, etc.) to determine whether such referrals are a source of excessive numbers of claims that are later determined to be unmeritorious, (b) the nature of "dropouts," claimants who fail to pursue their appeal rights, to determine why this occurs, and (c) the number of claimants who reapply in lieu of appealing, and the reasons therefor.

Citations:

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