

April 14, 2023

To: Administrative Conference of the United States (ACUS)

From: Legal Aid Society of Mid-New York, Inc. (LASMNY)

Re: Identifying and Reducing Burdens in Administrative Processes

ACUS has requested comments directly related to experiences interacting with an agency regarding a benefit or service, and suggestions for reducing burdens. These comments by LASMNY are intended to identify suggestions for the Social Security Administration (hereinafter “SSA”) to reduce burdens for those applying for Disability Insurance Benefits (hereinafter “DIB”), and Supplemental Security Income (hereinafter “SSI”).

LASMNY is a not-for-profit civil legal services provider funded in part by the Legal Services Corporation (hereinafter LSC). Since 1952, we have provided free civil (non-criminal) legal assistance to low-income and disabled residents in Central New York. Currently, we serve a thirteen-county area.

In 2022, LASMNY provided advice and counsel, brief service, and extended service representation to 413 disabled individuals having a legal issue related to DIB or SSI benefits. LASMNY attorneys and paralegals interact with various levels of SSA on a daily basis.

Based on LASMNY’s direct experience interacting with SSA, below are suggestions for reducing burdens in SSA’s administrative process.

1) SSA should allow members of the public to apply for SSI benefits online.

Currently, members of the public may apply for DIB online (<https://www.ssa.gov/applyfordisability/?tl=0>). However, members of the public seeking to apply for SSI benefits, must utilize the SSI online tool (<https://www.ssa.gov/ssi/start.html>). This online tool was released in March 2022 by SSA, and requires an individual submit some basic information to receive a protective filing date. A representative from SSA then schedules an appointment date and time via phone or letter with the individual.

However, this creates another step in the process for SSI applicants. To reduce burdens, for both SSA and members of the public, SSA should place the full SSI application online for members of the public to complete. In some SSI applications a follow up appointment between SSA and the applicant may need to occur to gather additional information. But in many applications, no appointment would be necessary, saving SSA and the applicant a significant amount of time.

Additionally, allowing members of the public to complete the entire application for SSI benefits online would make it easier for appointed representatives to assist their claimants in completing the SSI application. Overall, allowing members of the public to complete online applications for DIB and SSI benefits would reduce burdens in the administrative process for the public, representatives, and SSA.

2) SSA should eliminate reconsideration.

If an individual applies for DIB and/or SSI benefits, their claim undergoes an initial review process by SSA. After this initial review, if an individual's applications are denied, they receive a notice allowing them sixty days to request reconsideration, the next step in the appeals process. The individual then requests reconsideration, and their claim is reviewed by a different disability analyst and a decision on reconsideration is then issued.

In 2017, the allowance rate nationally for DIB and SSI benefits at the reconsideration level was 7.1% (https://www.ssa.gov/policy/docs/statcomps/di_asr/2018/sect04.html#table62). According to an Urban Institute of Justice Report (https://www.urban.org/sites/default/files/publication/100710/improving_the_social_security_disability_determination_process_0.pdf), SSA approved approximately 12% of disability cases at the reconsideration level in 2018. Data from SSA also shows that the processing time for reconsideration has increased from 108 days in FY 2014, to 183 days in FY 2022 (https://www.ssa.gov/open/data/disability_reconsideration_average_processing_time.html).

With an increase in processing time, and a low level of allowances made at the reconsideration level, reconsideration is a barrier for those applying for SSDI and SSI benefits. It is an extra step in the appeals process between initial denial and an Administrative Law Judge hearing that is confusing for the public and causes many disabled individuals to give up and not pursue an appeal at all.

LASMNY has encountered many difficulties representing claimants at the reconsideration level. This includes having reconsideration requests misplaced or not correctly processed by SSA, SSA not providing timely access to a claimant's file, and medical evidence not being properly added to a claimant's file for consideration. Furthermore, certain exhibits in a claimant's case are not available at reconsideration.

Eliminating reconsideration in the administrative process would reduce the burden to the public, appointed representatives, and SSA.

3) SSA's Office of Hearing Operations should maintain phone and Teams options for Administrative Law Judge hearings.

During the COVID-19 Pandemic, SSA's Office of Hearing Operations (hereinafter "OHO") introduced the option for a claimant to elect to hold their hearing before an Administrative Law Judge via telephone, Microsoft Teams, or in-person. After conducting hundreds of hearings throughout the COVID-19 pandemic via telephone, Teams, and in-person, LASMNY recommends that OHO maintain the choice for claimants to elect any of these three options for their hearing.

These choices allow disabled claimants the opportunity to select what type of hearing they prefer considering limitations stemming from their disabilities. This reduces burdens on claimants, representatives, and SSA, and the practice of giving claimants an option to select what type of hearing they prefer should be maintained.