



## Statement # 17

### **Comments on the Social Security Administration's Proposal on Reengineering the SSA Disability Process**

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(Adopted June 16, 1994)

In April 1994, the Disability Process Reengineering Team of the U.S. Social Security Administration issued a proposal on Disability Process Redesign (Redesign Proposal or Proposal). The SSA has asked for comments on this Proposal. This Statement constitutes the official comments of the Administrative Conference.

In general, the Conference supports most of the procedural changes that the Reengineering Team has proposed. Many of these changes have been recommended by the Conference as part of its past recommendations. In this Statement, the Conference presents its views concerning the Disability Process Redesign Proposal in light of these recommendations. This Statement does not address those aspects of the Proposal that relate to disability decision methodology.<sup>1</sup>

#### **I. Background**

##### **A. The Redesign Proposal**

The Reengineering Team has made a series of significant proposals to change the way that disability claims are decided. The Proposal eliminates two of the current four administrative stages of the process, and assigns responsibility for developing the record to a claim manager at the initial stage and to an “adjudication officer” at the appeal stage. It retains the use of an administrative law judge for the appeal stage.

##### **B. Past Administrative Conference Recommendations**

The Administrative Conference has undertaken a series of studies over the last 15 years that address aspects of the procedures relating to the processing of claims for disability benefits under the Social Security Act. This series of recommendations has centered at least

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<sup>1</sup> The sections of the proposal that address disability decision methodology relate to the structure for making the substantive decision whether a particular claimant meets the criteria for disability benefits. See “Disability Process Redesign, The Proposal from the SSA Disability Process Reengineering Team” (April 1994) at 15-18.



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once on each of the many steps in the process as it currently exists. The focus of many of these recommendations has been to improve the quality of decisionmaking by making sure that as much of the necessary information is in the record as early in the process as possible.

In 1978, the Conference issued Recommendation 78-2, *Procedures for Determining Social Security Disability Claims*,<sup>2</sup> which primarily addressed the administrative appeal stage of Social Security disability benefit adjudications. It recommended the continued use of ALJs, and made suggestions concerning the development of the evidentiary hearing record, including recommendations that ALJs take more care in questioning claimants, seek to collect as much evidence prior to the hearing as possible, make greater use of prehearing interviews, and make better use of treating physicians as sources of information.

In 1986, the Conference issued a recommendation on the use of nonattorney representatives in agency proceedings. Recommendation 86-1, *Nonlawyer Assistance and Representation*,<sup>3</sup> urged all agencies with “mass justice” programs, like the Social Security disability program, to encourage the use of nonlawyer representatives.

In 1987, the Conference issued two recommendations relating to the disability program. Recommendation 87-6, *State-Level Determinations in Social Security Disability Cases*,<sup>4</sup> addressed the first level of disability benefit determination and review. Recommendation 87-7, *A New Role for the Social Security Appeals Council*,<sup>5</sup> addressed the organization and function of the Appeals Council. Recommendation 87-6 was based on early results from demonstration projects involving the state-level disability determination process. It recommended additional experimentation with face-to-face procedures. Recommendation 87-7 suggested wide-ranging and substantial changes in the working of the Appeals Council, including that it move away from its historical function as a case review panel. The recommendation suggested that the caseload be significantly limited, and that the Appeals Council focus on important issues on which it could issue precedential opinions.

In 1989, the Conference issued two further recommendations affecting the disability program. Recommendation 89-10, *Improved Use of Medical Personnel in Social Security Disability Determinations*,<sup>6</sup> addressed a variety of issues involving medical decisionmaking in

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<sup>2</sup> 1 CFR 305.78-2 (1993).

<sup>3</sup> 1 CFR 305.86-1 (1993).

<sup>4</sup> 1 CFR 305.87-6 (1993).

<sup>5</sup> 1 CFR 305.87-7 (1993).

<sup>6</sup> 1 CFR 305.89-10 (1993)



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disability claim determinations. It proposed enhancement of the role of medical decisionmakers, increased effort to develop medical evidence in the record, and improved training of the medical staff on legal and program issues. It recommended use of optional face-to-face interviews and elimination of the reconsideration step. It also recommended that claimants be informed of deficiencies in the medical evidence prior to the issuance of an initial determination, and that the opinion of a claimant's treating physician be given the weight required by court decisions and SSA rules. Recommendation 89-8, *Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions*,<sup>7</sup> recommended that agencies index and make publicly available adjudicatory decisions of their highest level tribunals, and further urged agencies that do not treat decisions as precedential to reexamine that policy. This general recommendation would apply to the SSA.

Recommendation 90-4, *Social Security Disability Program Appeals Process: Supplementary Recommendations*,<sup>8</sup> issued in 1990, made suggestions about several different aspects of the appeals process, aimed at improving the record for decision. It recommended enhancement of information provided in decision documents, increased use of prehearing conferences in cases where claimants are represented, greater use of subpoenas by ALJs, and a closing of the record after the ALJ hearing, subject to limited opportunity to reopen based on new information.

In 1991, the Conference addressed the representative payee program for disability benefits. Recommendation 91-3, *The Social Security Representative Payee Program*,<sup>9</sup> addressed a number of procedural issues raised by that program. Among the recommendations was that the opportunity for face-to-face meetings be provided.

## II. Discussion

As discussed more fully below, the Conference supports most of the Redesign Proposal's changes in the process for adjudicating disability claims. This Statement will address issues categorized by the step in the process to which they apply.

### A. Initial Decision

#### 1. Role of Disability Claim Manager

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<sup>7</sup> 1 CFR 305.89-8 (1993).

<sup>8</sup> 1 CFR 305.90-4 (1993).

<sup>9</sup> 1 CFR 305.93-1 (1993).



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The proposal would assign full responsibility for claim development and initial decisionmaking to a disability claim manager. It also stresses the need to develop the record for decision as completely as possible at this stage. The Conference has consistently encouraged the development of as complete a record as possible, as early in the process as possible. Assigning that responsibility to a single well-trained person is consistent with the Conference's recommendations.

The Conference suggests that claim development practices be undertaken consistent with Conference Recommendation 89-10, which emphasizes the importance of full and complete factual development of disability claims, in particular the medical aspects of such claims. Recommendation 89-10 also supports the current team approach to disability decisionmaking, and suggests an enhanced role for medical personnel in both claim development and disability determination. As discussed in more detail below, the Redesign Proposal retains a role for medical personnel as consultants to claim managers. The Conference recommends that claim managers be directed to consult with medical sources regularly on medical matters.

The Proposal would allow third parties to help develop the information necessary to decide a claim. This concept is a reasonable one, so long as the claim manager retains ultimate responsibility for developing an adequate record and for making the decision on benefits based on the record.

### *2. Role of Medical Personnel as Consultants*

The Redesign Proposal suggests that claim managers may use medical consultants for advice on medical issues. The Conference, in Recommendation 89-10, suggested that the evaluation of medical evidence and decisions on medical issues should be made by a medical professional (physician or psychologist), who should also have responsibility for developing such evidence in the record. This recommendation was based on the two-member team approach currently in use at the state Disability Determination Service level. The Conference continues to believe that medically-trained personnel should have an important role in the decisionmaking process on medical evidence. Although the Proposal does state that disability claim managers will call on the services of medical consultants, it contemplates that the final decision on all matters, including the resolution of disputed medical issues, would rest with the claim manager. The Conference continues to stress the need to ensure that adequate consultation with medical experts takes place. Appropriate guidelines for such consultation



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should be developed.<sup>10</sup> The Conference also recommends the establishment of guidelines that set priorities for the use by claim managers of treating physicians, examining physicians, and non-examining physicians, including specialists.

The Conference supports the aspects of the Proposal designed to improve the quality of evidence provided by medical sources for disability adjudications. Many of these improvements and proposals track suggestions included in Recommendation 89-10. For example, the Conference has recommended that physicians be adequately compensated for their work, and that all contacts be documented routinely in writing and included in the record.

### *3. Predenial Notice with Opportunity for Face-to-Face Interview*

The Conference supports instituting the opportunity for a face-to-face interview between the claim manager and the claimant at the initial stage.<sup>11</sup> Such an opportunity will not only provide the claim manager with relevant information and the chance to ask for and get information efficiently, but it should also give claimants more confidence in the fairness of the process, by giving them an opportunity to be heard. This may have the effect of reducing appeals, even when benefits are denied, because the process will be seen to have increased legitimacy.

The Conference also supports the Redesign Proposal's concept of a predenial notice. The Conference has long supported the idea that claimants should be made aware of the deficiencies in their applications, and provided the opportunity to correct them.<sup>12</sup> Such steps are likely to lead to more accurate early decisionmaking.

### *4. Issuance of Full "Statement of the Claim" Decisions*

The Conference supports the issuance of full decisions on disability benefit claims. The proposed contents for "Statement of the Claim" decisions are consistent with those the Conference recommended in Recommendation 90-4. Providing sufficient information to claimants helps them make informed decisions about future action.

## **B. Elimination of the Reconsideration Step**

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<sup>10</sup> See Recommendation 89-10(A)(2).

<sup>11</sup> See Recommendation 89-10(4)(b); see also Recommendation 91-3(2), and preamble at B(2).

<sup>12</sup> Recommendations 78-2(B)(4), 89-10(b)(4), 90-4(1), 91-3.



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The Conference has also previously recommended that the reconsideration stage be eliminated if the claimant has an opportunity for face-to-face contact with the decisionmaker at the initial stage.<sup>13</sup> The Reengineering Team's proposal to provide such opportunity and to eliminate the redundancy of reconsideration is an important and positive step.

### **C. The Administrative Appeals Process**

#### *1. Use of Prehearing<sup>14</sup> Officer to Prepare Claim for Appeals*

The Conference has long supported the concept of developing the record for an appeal as early in the process as possible.<sup>15</sup> Thus, the approach of designating someone to prepare the claim for appeal is one the Conference supports. The Conference also supports the idea that claims be granted based on evidence in the record without a hearing.<sup>16</sup>

The Conference also recommends that prehearing officers not be required to be attorneys, although knowledge of the legal system and of applicable law would appear to be relevant qualifications.

#### *2. Use of Prehearing Conferences and Stipulations*

The Conference supports the use of prehearing conferences and stipulations, which could streamline the hearing process by narrowing issues and ensuring that the necessary evidence will be available at the hearing. In some cases, a prehearing conference may obviate the need for a hearing. It is our understanding, based on discussions with the Redesign Team, that the Proposal would limit prehearing conferences to cases where claimants are represented. This is consistent with Conference recommendations.<sup>17</sup>

#### *3. Consultation with Medical Sources in Appeals*

The Conference believes that improved case development will result from the special responsibilities given to disability claim managers at the initial decisionmaking level and to prehearing officers at the administrative hearing level. At the same time, the Conference

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<sup>13</sup> Recommendation 89-10(A)(4)(b), (B).

<sup>14</sup> The Conference recommends using the term "prehearing officer" rather than "adjudication officer." The term "adjudication officer" suggests another level of decisionmaking, which, even under the Redesign Proposal, is not a completely accurate description.

<sup>15</sup> Recommendations 78-2(B)(1),(2).

<sup>16</sup> Recommendation 90-4(2).

<sup>17</sup> Recommendation 90-4, preamble and (2).



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supports retaining authority for administrative law judges to consult with medical sources, as needed. The Conference believes that, in doing so, ALJs should follow practices similar to those set out in Recommendation 89-10.<sup>18</sup>

### *4. Retention of De Novo Hearing with an Administrative Law Judge*

The Conference supports the proposed role for prehearing officers in developing the record as a way to improve the effectiveness of ALJ decisionmaking. The Conference's recommendations, however, have been predicated on the presumption that an ALJ would have the ultimate decisionmaking responsibility. Although others may be available to assist, the ALJ must retain the responsibility for the content and quality of his or her decisions.

### *5. Role of the Appeals Council*

The Conference has previously recommended that the Appeals Council role in the disability process be limited.<sup>19</sup> The Conference believes that, in reviewing cases, the Council should focus on cases raising precedential questions. The Conference supports the Proposal's idea of having the Appeals Council also review cases on a random basis, looking at both grants and denials. The Conference also believes that the Appeals Council should have a role in providing guidance to decisionmakers at all stages in the claims process, through the use of precedent and interpretive guidelines concerning adjudicatory principles and decisional standards.

## **D. Other Issues**

### *1. Training*

The Conference supports proposals to enhance training of all staff involved in processing and adjudicating disability benefit claims.<sup>20</sup>

### *2. Representatives*

The Conference has recommended that claimants be provided information about sources of representation, both attorneys and nonattorneys.<sup>21</sup> It also has suggested that

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<sup>18</sup> Recommendation 89-10(C).

<sup>19</sup> Recommendation 87-7.

<sup>20</sup> Recommendations 89-10(A)(6), 78-2(C).

<sup>21</sup> Recommendation 78-2(E).



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appropriate standards be adopted concerning proper practice, and that nonattorney representatives be encouraged.<sup>22</sup> The Redesign Proposal contains similar types of suggestions.

### *3. Precedent*

The Proposal calls for a single presentation of all substantive policies used for determination of eligibility for benefits. This is consistent with a number of Conference recommendations that SSA make more use of agency guidance in disability benefits cases.<sup>23</sup> The Conference also recommends use of precedent and clear agency statements of policy to encourage uniform outcomes among similar cases. The Appeals Council could undertake, as one of its functions, the review of ALJ determinations for use as precedent.

### *4. Reopening the Record*

The Proposal implies that the record will be closed at the ALJ level. We support the idea that the record should close following the ALJ hearing, at a time set by the ALJ, and suggest that this be made explicit.

The Proposal is silent on the availability of any opportunity to reopen the record following the ALJ hearing. While the Conference does not generally encourage such reopenings, SSA should consider offering a limited opportunity to reopen the record in appropriate cases, consistent with Recommendation 90-4(4), (5).

### **Citations**

59 FR 44704 (August 30, 1994)

\_\_\_ FR \_\_\_\_\_ (2013)

1994-1995 ACUS 55

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<sup>22</sup> Recommendation 86-1.

<sup>23</sup> Recommendations 87-7(1)(a)(2); 78-2(c)(2); 89-8 n.2.