Recommendation 89-10

Improved Use of Medical Personnel in Social Security Disability Determinations

(Adopted December 15, 1989)

The Social Security Administration annually processes more than 1.5 million requests for Disability Insurance Benefits and Supplemental Security Income requiring a determination whether the claimant is disabled. The Administrative Conference has addressed various aspects of the Social Security Administration's administrative procedures in earlier recommendations.[1] This recommendation focuses more specifically on the appropriate use of medical personnel in making disability determinations.

The Social Security Administration (SSA) uses medical personnel currently in two ways. First, initial and reconsideration determinations are made for SSA by federally funded state agencies that use teams composed of one lay disability examiner and one medical doctor or psychologist.[2] Second, medical sources are used to provide evidence of disability in individual cases and to explain or elaborate upon medical evidence obtained from other sources, Medical sources provide evidence relating to individual claims to state agencies at the initial decision and reconsideration levels, to administrative law judges at the hearing level, and to the Appeals Council. Requests can be made to the claimant's treating physician or to an independent physician who is asked to examine the claimant and report on his or her findings. Doctors are asked by some administrative law judges to explain or elaborate upon existing medical evidence; other administrative law judges and most state agency personnel do not use independent medical doctors for these purposes. Medical personnel are involved in the disability determination process for other federal disability programs as well. Although the extent to which they are used varies from program to program, programs typically concentrate

[1] See Recommendations 78-2 (ALJ hearing stage), 87-6 (state level determinations), 87-7 (Appeals Council).

[2] For cases involving mental impairments, Social Security regulations provide that either psychologists or psychiatrists may assist in determining disability. Accordingly, references to the terms "medical sources," "physicians," and "doctors" in these recommendations are intended to include psychologists used in those cases.

the use of medical personnel at the initial decision stage, as does the Social Security Administration.[3]

There is no doubt that medical personnel can offer valuable assistance in making disability determinations called for by the Social Security Act. Notwithstanding the mixed medical and legal content of the Social Security Act's disability standards, most disability determinations require the resolution of medical issues in one form or another. At the same time, it must be recognized that doctors cannot simply apply their general medical expertise to the work of determining disability under a complex and multi-faceted statutory disability standard. Doctors are accustomed to evaluating a person's limitations in the context of treatment; they are oriented professionally to identify the cause of and resolve limitations, rather than to identify limitations and then measure them against stated requirements for receipt of benefits. These recommendations are intended to help reconcile the needs of the Social Security Administration disability determination process for medical expertise and the ability of the medical profession to meet those needs.

Medical personnel perform three main functions in current practice. First, they assist in developing the medical records on which disability decisions are based. Second, they provide medical evidence for the record, including medical findings and opinions relating to an individual claimant's impairments and explanations of other medical evidence already in the record. Third, they participate in making disability decisions at the initial and reconsideration levels based on the record.

Each of these functions suggests models for using medical decision makers in Social Security disability determinations. The first model would increase the responsibility of medical personnel for compiling all relevant medical evidence. Medical personnel would concentrate on evaluating the adequacy of the record and following up with requests for clarification and additional information from treating and consulting medical sources. Medical personnel would also be given specific responsibility for assuring that all medical evidence in the record is clear and understandable to both medical and non-medical decision makers. The second model would improve the use of doctors as sources for supplying medical data and opinions on which disability decisions can be based. This model also supports the use of medical personnel to evaluate and resolve certain specified medical issues relevant to a claim if, in a particular case,

[3] While the Conference has examined the other federal disability programs and believes that these recommendations hold valuable lessons for the agencies administering those programs, these recommendations are addressed solely to the Social Security Administration.

there are medical issues that can be identified as appropriate for separate decision. The third model would make more effective use of medical personnel in decision-making role. This model would concentrate medical resources at the initial decision level, where a doctor would share the responsibility for decision making with a non-medical disability examiner. The doctor member of the team would be given special responsibility for certain tasks, and would undertake a full and independent review of the entire record in each case. The expectation is that through open exchange of information between the two decision makers and a reasonable allocation of responsibility based on each member's expertise, most disability determinations will be made by consensus. If conflicts arise on medical issues, separate medical personnel would be given the authority to resolve those conflicts.

The following recommendations would implement the important provisions of each of these models. Implementing these recommendations would require greater expenditures for medical personnel and related support at the state agencies. However, additional costs should be offset by savings resulting from elimination of the reconsideration level and reduced numbers of administrative and federal court appeals.

Recommendation

A. Improvements at the Initial Decision Level

The Social Security Administration (SSA) should enhance the decisionmaking role of medical personnel at the initial decision level. This can be accomplished by improving upon the current practice of using two-member teams—consisting of a medical member who is a licensed physician or psychologist and a non-medical member who is a disability examiner—to determine disability, as follows:

1. *Responsibility for developing medical evidence*. SSA should ensure that the medical member of the team is given primary responsibility for developing the medical evidence[4] in the record.

[4] *"Medical evidence"* includes (1) medical findings and opinions relating to an individual claimant's impairments, (2) other evidence, including subjective symptoms, that is relevant to determining the existence or severity of the claimant's condition, and (3) explanations of other medical evidence already in the record. The recommendations' focus on development of medical evidence is not intended to minimize the importance of the development of other evidence, including vocational evidence.

(a) Staff and resources should be allocated so as to assure that a complete record of all evidence relevant to a disability claim is obtained before an initial decision is made on the claim.

(b) Specially trained support staff, including nurses and non-medical personnel, should be made available to assist the medical member in developing the medical evidence.

(c) The medical member should, whenever possible, be assigned direct responsibility for evaluating the adequacy of reports from physicians and for following up with requests for clarification or additional information from these sources.

2. *Identifying and deciding discrete medical issues*. SSA should develop a list of discrete issues raised by the applicable disability standards that may arise in individual claims and that are appropriate for decision by medical staff. The medical member of the team assigned to a claim should be made responsible for identifying any such discrete issues raised in the claim, developing all evidences relevant to the issue, and reaching a decision on that issue.

3. *Resolving medical conflicts*. SSA should ensure that medical personnel are used to resolve any conflicts on medical issues that arise in the course of team evaluations of disability at the initial decision level.

(a) Senior medical staff should be given the authority to review claims where the team members are unable to agree and to recommend further action, including the development of additional medical evidence, to resolve the conflict.

(b) If the conflict persists, the state agency's medical personnel should assume primary responsibility for evaluating the record with respect to the medical issues and for making a determination based on that record.

(c) As part of this process, independent medical experts, or panels of experts, should be identified and retained for use as examining and non-examining consultants, as appropriate.

4. *Notice of deficiencies in medical evidence*. SSA should require that claimants be informed specifically of any deficiencies in the medical evidence that could lead to an adverse determination before the initial decision is made.

(a) This notice should be prepared by the medical member of the team, should clearly explain any deficiency in the medical evidence, and should encourage the claimant to provide additional information and explanation, as needed. This notice should also state that

the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints.

(b) As part of this process, either the claimant or the medical member should have the authority to initiate a face-to-face interview.

5. *Ensuring quality of evidence*. SSA should take steps to improve the quality of evidence provided by medical sources for disability adjudications.

(a) Guidelines should be established that identify priorities for the use of treating physicians, examining physicians and non-examining physicians, including specialists, for these purposes.

(b) Selection and evaluation of physicians asked to provide medical information should be performed by medical personnel independent from the agency staff responsible for making disability decisions and should be supported by a system for quality control covering both the selection of physicians and the reports submitted.

(c) Physicians asked to provide medical information should be adequately compensated and should be provided with instructions as to applicable agency standards.

(d) Medical personnel should be able, when appropriate, to consult with specialists before ordering examinations or tests.

(e) All contacts with medical sources relating to the determination of disability for a particular claim should be documented routinely in writing and included in the record. SSA should ensure that claimants are provided a copy of any reports prior to issuance of the decision and accorded an opportunity to object and rebut appropriately.

6. *Training and supervision of medical personnel*. SSA should ensure that all medical personnel are trained fully on legal and program issues and work under the supervision of the chief medical officer in the state agency. SSA should also ensure medical staff act in accordance with the rules established by the Social Security Act and relevant federal court decisions, including the requirement to obtain and give appropriate weight to the opinions of claimants' treating physicians, in performing the functions described in paragraphs 2, 3(b), and 5(a).

B. Reconsideration

7. Elimination of Reconsideration. SSA should seek to concentrate the efforts of the disability determination team on a single initial decision process, as outlined in these recommendations. Together with implementations of these recommendations, the separate reconsideration stage should be eliminated.

C. Appeal Level

8. *ALJ use of medical experts.* SSA should encourage its administrative law judges to call on an independent medical expert in appropriate cases to assess the need for any additional medical evidence and to explain or clarify medical evidence in the record.[5] SSA should make clear by regulation that a medical expert's evidence can be presented orally or in writing. The regulations should also provide that claimants are notified of the inclusion of an expert's report in the record and should assure that claimants' rights to object to the inclusion of the report, submit rebuttal evidence, and cross-examine the expert are not abridged. The regulations should also provide that all information and opinions provided by medical experts must be included in the record.

Citations:

54 FR 53496 (December 29, 1989), as amended at 55 FR 1665 (January 18, 1990)

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[5] SSA should also ensure its ALJs receive appropriate training on medical issues relevant to their decisional responsibilities.