Comment from Catherine Clayton, Executive Director and Attorney-At-Law, West Tennessee Legal Services, in response to Request for Information for *Identifying and Reducing Burdens in Administrative Processes*
April 17, 2023

Dear Sir/Madam,
On behalf of West Tennessee Legal Services (WTLS), I am submitting the following comments:

SSD and SSI cases (from our senior managing attorney, benefits section)

1. The Disability Determination Section is not allowed to directly accept 1696 (appointment of representative forms—akin to notices of appearance). Those forms must be sent to the Social Security office for forwarding even though the case is pending at the Disability Determination Section (DDS) in Nashville in our case. In other states the state contract agency maybe called something else. This burdens the Social Security field office and prevents the disability examiner at DDS from even talking with the attorney much less working with that attorney. WTLS attorneys have been required to submit our appointment of representative forms multiple times. This is an unnecessary delay.
2. Similarly, it would help if we had access to the full electronic file at the Disability Determination Section which adjudicates or decides the first two levels of the disability process. Currently we do not have access to the decisions which makes the possibility of missing an appeal deadline increase especially if the above form is not processed and we do not receive a hard copy of the notice of decision. Perhaps even more of a barrier is the lack of access to the earnings record. We must ask the Social Security field office for a copy the record. That is important for reason number 3.
3. SSA requires a detailed work history report. Access to the earnings record would make it easier to complete the report for short term jobs during the last 15 years, the required look back period. Omission of a job can result in a denial for failure to cooperate even if the job was very short and lack of memory of it an honest mistake. Likewise, the lookback period should be shorter due to the changing nature of the jobs; 5 years would be more realistic. Also, the administration could prepopulate the work history form with jobs in which earnings would be above the dollar amount for presumptive substantial gainful activity thus eliminating irrelevant 3 week jobs at minimum wage. Hugely, The Dictionary of Occupational Titles, last revised in 1991, used by SSA is woefully obsolete; many occupations described therein were last updated in 1977.
4. Even more practical barriers, the SSA is not answering the phones as it should. SSA could be allowed to text but at least the Disability Determination Section is not allowed to text as of last week. (March 23, 2023); I have suggested that SSA use interns for routine matters such as replacing SS cards, changing names upon divorce or marriage, and providing proof of income. Use of encrypted e mail would also help; that has been done on a limited basis from the hearing offices.
5. SSA at the Disability Determination Section relies heavily on a form called the function report. They want a vast amount of detail; the form should be replaced by an interview with the client or with the client and the representative by phone so that the detail is captured. Also, the client is given 10 days to complete the form; mailing time quite often cuts that in half leading to a rush and omission of detail.

6. SSA could expand the use of HIT MER to collect medical records earlier. That is a form of direct electronic transfer of the records from the provider to SSA.
7. The Disability Determination Section could provide more background information about the client than they currently do to their examining contract doctors. I was told on March 23, 2023 that there is a 15 page limit and that other states have a smaller number of page units. I am able to submit evidence electronically that has many more pages, so I doubt that the lower page limit is system based though I am not told that it is.

Other (these are regarding state-administered programs but the comments may be helpful – comments made by staff attorney in our benefits section)

1. **Unemployment cases:**
    a. Contact claimants through more than one form of communication if the communication contains a deadline for response or appeal. Several former clients told me they were contacted by the Department of Labor exclusively through their email or their online portal messaging system, and they missed the communication and the associated appeal deadline. Then they are stuck with a hearing to determine whether there is "good cause" to have a late appeal, and the Department is almost never willing to recognize the fact that they were not expecting an online message or email with that deadline as "good cause."
    b. Take up all the issues for one unemployment case in the same hearing. I had a client with 10 different "claims" because the Department of Labor broke it down by weeks the client was paid benefits. This meant the client had 10 different telephone hearings we had to call in to in a single week. And we had the same defense for all of them, but because we had different hearing officers, we won some and lost some. It made absolutely no sense. Even the hearing officers could not explain why it was done this way.
    c. Do better about notifying claimants that they have a right to representation by an attorney in appeals hearings. Several former clients told me they had no idea they could have an attorney in telephone hearings with the appeals tribunal. While a sophisticated client could conceivably represent themselves well in a phone hearing, usually they are not able to follow the proper procedure to admit exhibits as evidence and properly cross examine witnesses. This can have permanent damage on their case because the next administrative review uses the existing record unless you can show good cause for needing a new hearing (and the Department has historically not considered the lack of legal representation as "good cause," at least in cases in which I made that argument). Then, if they lose the next administrative appeal, they are stuck with the record again for an appeal in chancery court. If claimants were more aware of their legal rights, they could potentially avoid a significant denial or overpayment.

2. **TennCare (Tennessee's version of Medicaid) cases:**
    a. Use set times for appeal hearings. Right now, they use a window (e.g., 1:00-4:00 p.m.) and they call you when it is time for the hearing to start. For a client, that means you cannot go to work or school during that window, or you at least must be able to break away for a significant portion of time. And for advocates, it means you cannot commit to doing any other work that requires your full

attention during that time because you also must be ready to break away and have a hearing at a moment's notice.

b. Stop trying to resolve hearings without having a hearing. I had a former client who appealed a TennCare denial and an attorney with TennCare contacted me to try to get me to convince the client to withdraw the appeal or otherwise take it off the docket. The client has a right to this hearing and was very confused about that attorney trying to stop the hearing.

We are grateful for the opportunity to provide these comments. Please do not hesitate to contact me directly if you have questions or need further information.

Best regards,

Catherine B. Clayton
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West Tennessee Legal Services