

**NATIONAL ORGANIZATION OF SOCIAL SECURITY
CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

POSITION PAPER

**IMPROVING THE DISABILITY DETERMINATION PROCESS
WHILE PROTECTING CLAIMANTS' RIGHTS**

November 2002

The backlog of cases waiting for ALJ and Appeals Council decisions is unacceptably long. Reducing the backlog and processing time must be a high priority. Recently, a number of proposals to change the disability determination process have been put forward. We strongly support efforts to reduce unnecessary delays for claimants and to make the process more efficient, so long as they do not affect the fairness of the process to determine a claimant's entitlement to benefits. Further, changes at the "front end" can have a significant beneficial impact on improving the backlogs and delays later in the appeals process, by making correct disability determinations at the earliest possible point. Emphasis on improving the "front end" of the process is appropriate and warranted, since the vast majority of claims are allowed at the initial levels.

We support the recommendations described below because they balance efforts to improve the process with ensuring fairness and protecting the rights of people with disabilities.

◆ **PROVIDE SSA WITH ADEQUATE RESOURCES TO MEET
CURRENT AND FUTURE NEEDS**

We are concerned about SSA's readiness to deal with the impending increase in its workload as the "baby boom" generation approaches the peak age for onset of disability and, subsequently, retirement. Recent Congressional testimony painted a bleak picture regarding SSA's ability to deal with the increased work, at the same time that its own workforce will reach peak retirement numbers. To exacerbate this problem, SSA's budget continues to be lower than levels that would allow it to adequately address current and future service delivery needs.

To improve delays, better develop cases and implement technological advances, SSA requires adequate staffing and resources. We support removing SSA's administrative budget, like its program budget, from the discretionary domestic spending caps. Legislation such as H.R. 5447, a bipartisan bill introduced in 2000 by Reps. E. Clay Shaw, Jr. (R-FL) and

Benjamin Cardin (D-MD), would accomplish this by allowing Congress to approve funding for SSA to address current service delivery needs and planning for the future.

We urge commitment of resources and personnel to resolve the waiting times and make the process work better for people with disabilities. SSA must be provided with the resources to fully meet its administrative responsibilities. This can best be accomplished by removing SSA's Limitation on Administrative Expenses budget authority from the domestic discretionary spending category.

◆ **IMPROVE FULL DEVELOPMENT OF THE RECORD EARLIER IN THE PROCESS**

Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. The decisionmaker needs to review a wide variety of evidence in a typical case, including: medical records of treatment; opinions from medical sources and other treating sources, such as social workers and therapists; records of prescribed medications; statements from former employers; and vocational assessments. The decisionmaker needs these types of information to determine the claimant's residual functional capacity, ability to return to former work, and ability to engage in other work which exists in the national economy in significant numbers. Once an impairment is medically established, SSA's regulations envision that all types of relevant information, both medical and nonmedical, will be considered to determine the extent of the limitations imposed by the impairment(s).

The key to a successful disability determination process is having an adequate documentation base and properly evaluating the documentation that is obtained. Unless claims are better developed at earlier levels, the procedural changes will not improve the disability determination process. Unfortunately, very often the files that denied claimants bring to our members show that inadequate development was done at the initial and reconsideration levels. Until this lack of evidentiary development is addressed, the correct decision on the claim cannot be made. Claimants are denied **not** because the evidence establishes that the person **is not disabled**, but because the limited evidence gathered cannot establish that the person **is disabled**.

A properly developed file is usually before the ALJ because the claimant's representative has obtained evidence or because the ALJ has developed it. Not surprisingly, different evidentiary records at different levels can easily produce different results on the issue of disability. To address this, the agency needs to emphasize the full development of the record at the beginning of the claim.

We support full development of the record at the beginning of the claim so that the correct decision can be made at the earliest point possible. Claimants should be encouraged to submit evidence as early as possible. However, the fact that early submission of evidence does not occur more frequently is usually due to reasons beyond the claimant's control.

Our recommendations to improve the development process include the following:

- SSA should explain to the claimant, at the beginning of the process, what evidence is important and necessary.
- DDSs need to obtain necessary and relevant evidence. Representatives often are able to obtain better medical information because they use letters and forms that ask questions relevant to the disability determination process. DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. The same effort should be made with nonphysician sources (e.g., therapists, social workers) who see the claimant more frequently than the treating doctor and have a more thorough knowledge of the limitations caused by the claimant's impairments.
- Improve treatment source response rates to requests for records, including more appropriate reimbursement rates for medical records and reports.
- Provide better explanations to medical providers, in particular treating sources, about the disability standard and ask for evidence relevant to the standard.

◆ **TECHNOLOGICAL IMPROVEMENTS**

Commissioner Barnhart has made a strong commitment to improve the technology used in the disability determination process. We fully support the Commissioner in this effort, as we believe that much of the delay in the system could be rectified with improved technology. Several initiatives have been announced recently that could not only reduce delays, but also provide better service to the public and not require fundamental changes to the process.

The electronic folder: "eDIB." The Commissioner is moving forward to develop the electronic disability folder, "eDIB," as soon as practicable in light of available resources. This would reduce delay caused by moving and handing-off folders, allowing for immediate access by whichever component of SSA or DDS is working on the claim. Further, this would allow adjudicators to organize files to suit their preference.

In terms of preparing a record for federal district court, eDIB would allow for electronic filing of the administrative record, which is consistent with the Judicial Conference of the United States' policy and initiative to move towards electronic filing of documents and pleadings. The Appeals Council has had difficulty reproducing copies of the record, whether needed by the claimant or for federal court filing. Files are too often lost or difficult to locate, leading to delays at the Appeals Council and district court levels. The electronic folder would certainly ease the workload in this regard and, consequently, reduce delays.

While strongly supporting development of eDIB, we urge the Commissioner to ensure that the electronic folder contains complete copies of the paper records, rather than summaries or otherwise reduced copies, and that claimants are able to submit evidence in any format, including paper records.

Digital recording of hearings. Another important component of technological improvement is digital recording of ALJ hearings. Currently, hearings are taped on obsolete tape recorders, which are no longer even manufactured. If copies are needed, they must be transferred to cassette tapes, which is time-consuming. Tapes are frequently lost because they are stored separately from the paper folder. Given the age of the taping equipment, the quality of tapes is often quite poor, which also results in remands from the Appeals Council or the district court. A digitally recorded hearing would not only be of high audio quality but would be easy to copy or transfer to the district court as part of the administrative record.

Use of video teleconferencing at ALJ hearings. The Commissioner also has announced an initiative to expand the use of video teleconference ALJ hearings. This allows ALJs to conduct hearings without being at the same geographical site as the claimant and representative and has the potential to reduce processing times and increase productivity. Claimants and their representatives have participated in pilots conducted by SSA and have reported a mixed experience, depending on the travel benefit for claimants, the quality of the equipment used, and the hearing room set-up.

In 2001, SSA published proposed rules on video teleconference hearings before ALJs.¹ In general, we support the proposed rules and the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected and the quality of video teleconference hearings is assured.

◆ ELIMINATE THE RECONSIDERATION LEVEL

We support elimination of reconsideration and adding some type of predecision contact with the claimant.

Over the past few years, SSA has been testing elimination of the reconsideration level in ten “prototype states” [AL, AK, CA, CO, LA, MI, MO, NH, NY, PA]. Until recently, the testing also included a predecision interview, known as a “claimant conference.”

The prototype testing to date has had positive results for claimants. Benefits have been awarded at a slightly higher rate (40.4% vs. 39.8%) and about 135 days sooner. Further, the overall accuracy rate was slightly higher under the prototype. For denied claims under the prototype, cases reached ALJs about 70 days sooner than under the traditional process. Thus, the preliminary results of the prototype show that claims are awarded earlier in the process; that accuracy is comparable to non-prototype cases; and that denied claims move to the next level sooner.

Elimination of the reconsideration level was scheduled to be implemented nationwide in 2002. However, SSA announced in mid 2001 that the nationwide rollout would be deferred pending further analysis because of increased administrative and program costs and

¹ 66 Fed. Reg. 1059 (Jan. 5, 2001).

increased appeals to the ALJ level. We urge the Commissioner to develop a process that eliminates the reconsideration level.

In April 2002, the Commissioner announced that testing of the claimant conference would be halted, which apparently became effective upon publication of the recent notice in the Federal Register² that extended the elimination of reconsideration testing.

We advocate the value of providing claimants with a face-to-face meeting with the decisionmaker and hope that the Commissioner will find a way to incorporate the most beneficial features of the original objectives of the claimant conference. When she announced that the conference would be eliminated, the Commissioner stated that SSA would encourage early and ongoing contacts with claimants during the development process. As discussed above, these are goals that we strongly endorse. Many claimants' representatives and others would like to participate earlier in the process since they are able to assist the disability examiners in obtaining medical evidence and focusing the issues. The conferences also allow claimants to further explain their limitations.

◆ **RETAIN THE RIGHT TO A *DE NOVO* HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE**

A claimant's right to a hearing before an Administrative Law Judge (ALJ) is central to the fairness of the adjudication process. This is the right to a full and fair administrative hearing by an independent decisionmaker who provides impartial fact-finding and adjudication, free from any agency coercion or influence. The ALJ asks questions of and takes testimony from the claimant, may develop evidence when necessary, considers and weighs the medical evidence, evaluates the vocational factors, all in accordance with the statute, agency policy including Social Security Rulings and Acquiescence Rulings, and circuit case law. For claimants, a fundamental principle of this right is the opportunity to present new evidence in person to the ALJ, and to receive a decision from the ALJ that is based on all available evidence.

◆ **SSA SHOULD NOT BE REPRESENTED AT THE ALJ LEVEL**

We do not support proposals to have SSA represented at the ALJ hearing. In the 1980's, SSA tested, and abandoned, a pilot project to have the agency represented, the Government Representation Project (GRP). First proposed by SSA in 1980, the plan encountered a hostile reception at public hearings and from Members of Congress and was withdrawn. The plan was revived in 1982 with no public hearings and was instituted as a one-year "experiment" at five hearing sites. The one-year experiment was terminated more than four years later following congressional criticism and judicial intervention.³

² 67 Fed. Reg. 42595 (June 24, 2002).

³ In *Sallings v. Bowen*, 641 F. Supp. 1046 (W.D.Va. 1986), the federal district court held that the Project was unconstitutional and violated the Social Security Act. In July 1986, it issued an injunction prohibiting SSA from holding further proceedings under the Project.

Based on the stated goals of the experiment, i.e., assisting in better decisionmaking and reducing delays, it was an utter failure. Congress found that: (1) processing times were lengthened; (2) the quality of decisionmaking did not improve; (3) cases were not better prepared; and (4) the government representatives generally acted in adversarial roles. In the end, the GRP experiment did nothing to enhance the integrity of the administrative process.

The GRP caused extensive delays in a system that was overburdened, even then, and injected an inappropriate level of formality, technicality, and adversarial process into a system meant to be informal and nonadversarial.

The longstanding view of the courts, Congress, and the agency is that this is an informal process, with SSA's underlying role to be one of determining disability and paying benefits. Proponents of representing the agency believe that SSA is not being fairly represented in the determination process. It is important to note that SSA and the claimant are not parties on opposite sides of a legal dispute. SSA already plays a considerable role in setting the criteria and procedures for determining disability: it publishes regulations and Rulings; it provides more detailed internal guidance for SSA and DDS workers; and it hires ALJs. To establish disability, the claimant must follow the rules set by SSA.

In the current nonadversarial process, SSA's role is not to oppose the claimant. SSA's role is to ensure that claimants are correctly found eligible if the statutory definition of disability, as contemplated by Congress, is met, whether or not a representative is involved. ALJs, like all adjudicators, have a duty to develop the evidence and investigate the facts. Nevertheless, they should view the claimant's representative as an ally in collecting necessary and relevant evidence and focusing the issues to be addressed.

In addition to radically changing the nature of the process, the financial costs of representing the agency at the hearing level would be very high. In 1986, SSA testified in Congress that the cost was \$1 million per year for only five hearings offices (there currently are 138 offices). Also, given that the hearings would be adversarial, SSA would be subject to paying attorneys fees under the Equal Access to Justice Act in appropriate cases. Given the past experience with government representation and the enormous cost, we believe that the limited dollars available to SSA could be put to better use by assuring adequate staffing at the DDSs and OHAs and developing better procedures to obtain evidence, including reasonable payment for medical records and examinations.

◆ REINSTATE THE SENIOR ATTORNEY PROGRAM

Rather than making the process adversarial by injecting government representatives into the process, not to mention the increased administrative costs, we urge the Commissioner to consider other ways to assist ALJs in meeting their obligations and fulfilling their duties.

In the 1990's, as an initiative to reduce the backlog of cases at hearings offices, senior staff attorneys were given the authority to issue fully favorable decisions in cases that could be decided without a hearing (i.e. "on the record"). This program was well received by

claimants' advocates because it presented an opportunity to present a case and obtain a favorable result efficiently and promptly. And, of most importance, thousands of claimants benefited. While the Senior Attorney Program existed, it helped to reduce the backlog by issuing approximately 200,000 decisions. The initiative was phased out in 2000.

We support reinstating senior attorney authority to issue decisions in cases that do not require a hearing and expanding ways that they can assist ALJs. For instance, they also can provide a point person for representatives to contact for narrowing issues, pointing out complicated issues, or holding prehearing conferences.

◆ OTHER HEARING LEVEL IMPROVEMENTS

The Commissioner recently decided that the Hearings Process Improvement plan (HPI) would be discontinued as a nationwide initiative and that she would move forward, based on what was learned from that initiative. We support her decision.

From the inception of HPI, claimants' advocates raised numerous, critical concerns about the current state of affairs in hearing offices around the country. These concerns were shared last year with the Executive Task Force established by former Acting Commissioner Massanari to evaluate HPI. The main problems included: processing times after the Request for Hearing is filed; development of evidence; lack of on-the-record decisions; conduct of hearings; and processing times after the hearing. Specific concerns included duplicate requests for medical evidence; inability to speak to a "point" person on the case; mail not being associated with the file prior to the hearing; organization of files; preparing cases for hearing; and confusion over when a case was ready for hearing.

Some of the recommendations presented to the Task Force included: (1) creating the same claims folder earlier in the process; (2) reinstating senior attorney authority to issue decisions in certain cases; (3) identifying a "point" person who is available to ensure that the case is ready for hearing; (4) a better mechanism for review of requests for on-the-record decisions; (5) single requests for information; and (6) advance notice of hearings so that submission of evidence can be targeted. We hope that the Commissioner will consider these recommendations as she determines the future organization of the hearings process.

In addition, the Commissioner and the Associate Commissioner for Hearings and Appeals recently announced an initial series of initiatives to improve the hearings and appeals process. These initiatives involve policy modifications within the construct of the current process that could have a considerable impact, and would not require fundamental changes. These initiatives include:

- **Early screening and analysis of cases, including possible on-the-record decisions.** SSA believes that this initiative could involve 28% of the cases and has estimated that processing times for involved cases could be reduced by 50 days and 3-5 days on all cases at OHA.
- **Short form favorable decisions.** SSA has estimated that this initiative could reduce processing times by 15 days.

- **Bench decisions.** ALJs would have the discretion to issue bench decisions, using voice recognition software. Processing time could be reduced by 25 days for the case involved, and 2-3 days for total processing time.
- **Expansion of videoconference hearings**
- **Digital recording of hearings**

We are generally supportive of these initiatives so long as they do not impair the claimant's right to a full and fair hearing. The technological improvements are discussed in a previous section of this Paper.

◆ **KEEP THE RECORD OPEN FOR NEW EVIDENCE**

Many recent proposals to change the disability determination process recommend that the record be closed to new evidence either after the DDS or, at least, after the ALJ hearing level. In the past, both Congress and SSA have recognized that such proposals are neither beneficial to claimants nor administratively efficient for the agency.

As noted earlier, we strongly support the submission of evidence as early as possible. Full development of the record at the beginning of the claim means that the correct decision can be made at the earliest point possible. The benefit is obvious: the earlier a claim is adequately developed, the sooner it can be approved and the sooner payment can begin. However, there are many legitimate reasons why evidence is not submitted earlier and thus why closing the record is not beneficial to claimants including: (1) the need to keep the process informal; (2) changes in the medical condition which forms the basis of the claim; (3) the fact that the ability to submit evidence is not always in the claimant's or representative's control.

(1) Keeping the process informal. For decades, Congress, the United States Supreme Court and SSA have recognized that the informality of SSA's process is a critical aspect of the program. Closing the record is inconsistent with Congress' intent to keep the process informal and with the intent of the program itself, which is to correctly find eligibility for claimants who meet the statutory requirements.

The value of keeping the process informal should not be underestimated: it encourages individuals to supply information, often regarding the most private aspects of their lives. The emphasis on informality also has kept the process understandable to the layperson, and not strict in tone or operation. SSA should be encouraged to work with claimants to obtain necessary evidence and better develop the claim earlier in the process. But, to the extent that important and relevant evidence becomes available at a later point in the claim, the claimant should not be foreclosed from submitting it, since this is essentially an "inquisitorial," or truth-seeking process.

(2) Changes in the medical condition. Claimants' medical conditions may worsen over time and/or diagnoses may change. Claimants undergo new treatment, are hospitalized or are referred to different doctors. Some conditions, such as multiple sclerosis or certain mental impairments, may take longer to diagnose definitively. The severity of an impairment

and the limitations it causes may change due a worsening of the medical condition, e.g., what is considered a minor cardiac problem may become far more serious after a heart attack is suffered. Further, some claimants mischaracterize their own impairments and limitations, either because they are in denial, lack judgment, or simply do not understand their illness. By their nature, these claims are not static and a finite set of medical evidence does not exist.

(3) The ability to submit evidence is not always in the claimant's or representative's control. Claimants always benefit by submitting evidence as soon as possible. However, there are many reasons why they are unable to do so and for which they are not at fault. Closing the record penalizes claimants for factors beyond their control, including situations where:

- DDS examiners fail to obtain necessary and relevant evidence. Further, the DDSs do not use questionnaires or forms that are tailored to the specific type of impairment or ask for information that addresses the disability standard as implemented by SSA.
- Neither SSA nor the DDS explains to claimants or providers what evidence is important, necessary and relevant for adjudication of the claim.
- Claimants are unable to obtain records either due to cost or because state laws prevent them from directly obtaining their own medical records.
- Reimbursement rates for providers are inadequate.
- Medical providers delay or refuse to submit evidence.

The current system provides a process to submit new evidence at the ALJ hearing and, if certain conditions are met, at later appeals levels. So that claimants are not penalized for events beyond their control, the opportunity to submit evidence should not be eliminated in the name of streamlining the system.

Filing a new application is not a viable option. Proponents of closing the record note that claimants could file a new application. This does not improve the process and may in fact severely jeopardize, if not permanently foreclose, eligibility for benefits.

By reapplying rather than appealing: (1) benefits could be lost from the effective date of the first application; (2) in SSDI cases, Medicare benefits could be delayed, since eligibility begins only after the individual has received SSDI benefits for 24 months; (3) in SSDI cases, there is the risk that the person will lose insured status and not be eligible for benefits at all when a new application is filed; and (4) if the issue to be decided in the new claim is the same as in the first, SSA will find that the doctrine of *res judicata* bars consideration of the second application.

In the past, SSA's notices misled claimants regarding the consequences of reapplying for benefits in lieu of appealing an adverse decision and Congress responded by addressing this serious problem. In legislation enacted in 1990, SSA was required to include clear and specific language in its notices describing the adverse effect on possible eligibility to receive payments by choosing to reapply in lieu of requesting review.⁴

⁴ 42 U.S.C. §§ 405(b)(3) and 1383(c)(1).

Apart from these harsh penalties, a claimant should not be required to file a new application merely to have new evidence considered where it is relevant to the prior claim. If such a rule were established, SSA would need to handle more applications, unnecessarily clogging the front end of the process. Further, there would be more administrative costs for SSA by creating and then developing a new application.

Current law sets limits for submission of new evidence after the ALJ decision is issued. Under current law, an ALJ hears a disability claim *de novo*. Thus, new evidence can be submitted and will be considered by the ALJ in reaching a decision. However, the ability to submit new evidence and have it considered becomes more limited at later levels of appeal.

At the Appeals Council level, new evidence will be considered, but **only** if it relates to the period before the ALJ decision and is “new and material.”⁵ While the Appeals Council remands about one-fourth of the appeals filed by claimants, it is important to note that a major basis for remand is not the submission of new evidence, but rather legal errors committed by the ALJ, including the failure to consider existing evidence according to SSA regulations and policy and to apply the correct legal standards.

At the federal district court level, the record is closed and the court **will not consider** new evidence. Under the Social Security Act,⁶ there are two types of remands:

- (1) Under “sentence 4” of 42 U.S.C. § 405(g), the court has authority to “affirm, modify, or reverse” the Commissioner’s decision, with or without remanding the case; and
- (2) Under “sentence 6,” the court can remand (a) for further action by the Commissioner where “good cause” is shown, but only before the agency files an Answer to the claimant’s Complaint; or (b) at any time, for additional evidence to be taken by the Commissioner (**not** by the court), but only if it is “new and material” and there is “good cause” for the failure to submit it in the prior administrative proceedings.

While there is a fairly high remand rate at the court level, the vast majority of court remands are not based on new evidence, but are ordered under “sentence 4,” generally due to legal errors committed by the ALJ. Because courts hold claimants to the stringent standard in the Act, remands under the second part of “sentence 6” for consideration of new evidence submitted by the claimant occur very infrequently.

On the other hand, remands under the first part of “sentence 6” occur with some frequency. In these cases, SSA may move for a voluntary remand before it has filed an Answer to the claimant’s Complaint because a file or hearing tape is lost and the administrative record cannot be completed. Or, SSA may reconsider its position on the merits of the case, realizing that the Commissioner’s final administrative decision is not defensible in court.

⁵ 20 C.F.R. §§ 404.970(b) and 416.1470(b).

⁶ 42 U.S.C. § 405(g).

◆ RETAIN REVIEW BY THE APPEALS COUNCIL

In the ten prototype states, SSA has been testing the elimination of a claimant's right to request review of a hearing decision by the Appeals Council. We oppose the elimination of a claimant's right to request review by the Appeals Council. The Appeals Council currently provides relief to nearly one-fourth of the claimants who request review of ALJ denials, either through outright reversal or remand back to the ALJ. The Appeals Council has made significant improvements in reducing processing times and its backlog. By the end of this year, its pending caseload could be at a workable level.

The Appeals Council, when it is able to operate properly and in a timely manner, provides claimants with effective review of ALJ decisions. In addition, elimination of Appeals Council review could have a serious negative impact on the federal courts. As long ago as 1994, the Judicial Conference of the United States opposed elimination of the claimant's request for review by the Appeals Council prior to seeking judicial review in the district courts, stating that such a proposal was "likely to be inefficient and counter-productive."⁷ The Judicial Conference also recognized the Appeals Council's role as a screen between the ALJ and federal court levels, noting that "[c]laimants largely accept the outcome of Appeals Council review." Further, the Conference expressed concern that allowing direct appeal from the ALJ denial to federal district court could result in a significant increase in the courts' caseloads. As a result, the Judicial Conference concluded:

From the perspective of both unsuccessful litigants and the federal courts, the present system of Appeals Council review as a precondition to judicial review is sound. The right of judicial review by Article III courts for all claimants remains intact under the present system. To the extent that the process of Appeals Council review is thought to be too time-consuming, despite the high degree of finality that results, it would be wiser to seek to streamline and expedite the process of review rather than to bypass it as a precondition to federal judicial review.⁸

We agree with the conclusion of the Judicial Conference of the United States. Access to review in the federal courts is the last and very important component of the hearings and appeals structure. Court review is not *de novo*, but rather, is based on the substantial evidence test. We believe that both individual claimants and the system as a whole benefit from federal court review. The district courts are not equipped, given their many other responsibilities, to act as the initial screen for ALJ denials.

◆ RETAIN ACCESS TO JUDICIAL REVIEW IN THE FEDERAL COURT SYSTEM.

We support the current system of judicial review. Proposals to create either a Social Security Court to replace the federal district courts or a Social Security Court of Appeals to provide

⁷ Comments dated May 26, 1994, of Chief Judge John F. Gerry, Chairman of the Judicial Conference of the United States, in response to SSA's April 1, 1994 "Disability Reengineering Project Proposal."

⁸ *Id.*

appeal of all Social Security cases from district courts have been considered, and rejected, by Congress and SSA over the past twenty years.

We believe that both individual claimants and the system as a whole benefit from the federal courts deciding Social Security cases. Over the years, the federal courts have played a critical role in protecting the rights of claimants. The system is well-served by regular, and not specialized, federal judges who hear a wide variety of federal cases and have a broad background against which to measure the reasonableness of SSA's practices.

Creation of either a single Social Security Court or Social Security Court of Appeals would limit the access of poor disabled and elderly persons to judicial review. Under the current system, the courts are more geographically accessible to all individuals and give them an equal opportunity to be heard by judges of high caliber.

Rather than creating different policies, the courts, and in particular the circuit courts, have contributed to national uniformity, e.g., termination of disability benefits, denial of benefits to persons with mental impairments, rules for the weight to give medical evidence, evaluation of pain. The courts have played an important role in determining the final direction of important national standards, providing a more thorough and thoughtful consideration of the issues than if a single court had passed on each. As a result, both Congress and SSA have been able to rely upon the court precedent to produce a reasoned final product.

Finally, the financial and administrative costs of creating these new courts must be weighed against their questionable effectiveness to achieve the stated objectives. The courts, if created, would involve new expenditures. We believe that limited resources should be committed to the front end of the process. Further, from an administrative perspective, the focus should not be on the end of the appeals process but, rather, on the front end. Requiring claimants to pursue an appeal to obtain the justice they are due from the beginning will only add to the cumulative delay they currently endure.

We share concerns about the growth in the number of civil actions filed in federal court, which also places increased workload responsibilities on the SSA component assigned to prepare court cases.

Advocates report increasing delays and government requests for extension while cases are pending in court, in order to locate files and prepare transcripts. In many cases, the files cannot be found and the court must remand the case for a new hearing. In many other cases, the government agrees to remand the case voluntarily due to procedural or substantive errors, realizing that the Commissioner's final administrative decision is not defensible in court.

As discussed earlier in this Paper, SSA may move for a voluntary remand before it has filed an Answer to the claimant's Complaint. Remands requested by SSA occur with some frequency, as evidenced by SSA's own statistics. The ratio of "requests for voluntary remand" to the total number of new cases filed in court is substantial. In 2001, 15,968 new

court cases were filed. But, the Commissioner (through the Appeals Council) received 5,072 “requests for voluntary remand.”

We urge the Commissioner to review the way that SSA handles litigation of court cases, since we believe that there are ways to lessen the workload impact on SSA and the courts, and that in many cases, claimants should not have been required to appeal to the court level to obtain relief.

We believe that the technological improvements discussed earlier in this Paper would help to alleviate this problem.

We also have offered to work with SSA and the courts to find ways to make the court process more efficient for all parties involved. For instance, in some individual district courts, the agency has worked with the court and the local bar to develop model procedural orders.

CONCLUSION

For people with disabilities, it is critical that the Social Security Administration address and significantly improve the process for determining disability and the process for appeals. We strongly support efforts to reduce unnecessary delays for claimants and to make the process more efficient, so long as they do not affect the fairness of the process to determine a claimant’s entitlement to benefits.

We are pleased to see Commissioner Barnhart take on this task as a major goal of her tenure as Commissioner. We support her view that this is a vitally necessary course of action for the agency and we look forward to working with the Commissioner in meeting the challenges.

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