

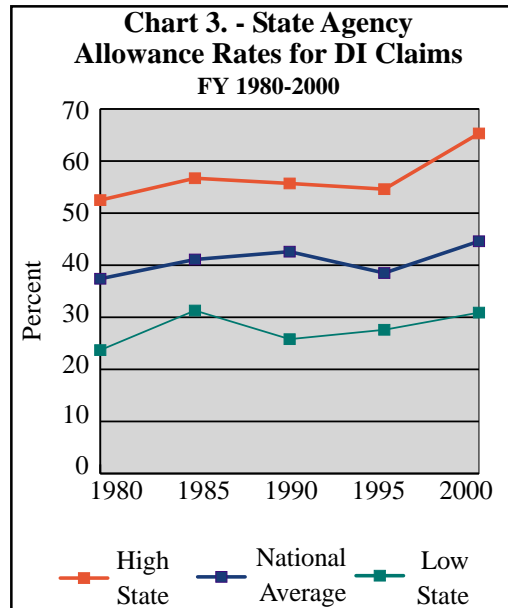
II. MAJOR ISSUES NEED TO BE ADDRESSED

A. *Are disability decisions consistent and fair?*

Consistency and fairness should be fundamental goals of the disability programs. One of the major strengths of the Social Security retirement program is that benefits are paid on the basis of objective rules that treat people consistently and fairly. A primary reason why the disability programs do not share the same level of public confidence as the retirement program is the perception that determinations of eligibility for disability are not being made in a uniform and consistent manner.

The Board has assembled data that show striking differences in outcomes over time, among State agencies, and between levels of adjudication. Allowance and denial rates, both overall and for specific impairment categories, vary widely from State to State and region to region. For example, in fiscal year 2000 the percentage of DI applicants whose claims were allowed by a State agency ranged from a high of 65 percent in New Hampshire to a low of 31 percent in Texas, with a national average of 45 percent. (Chart 3)

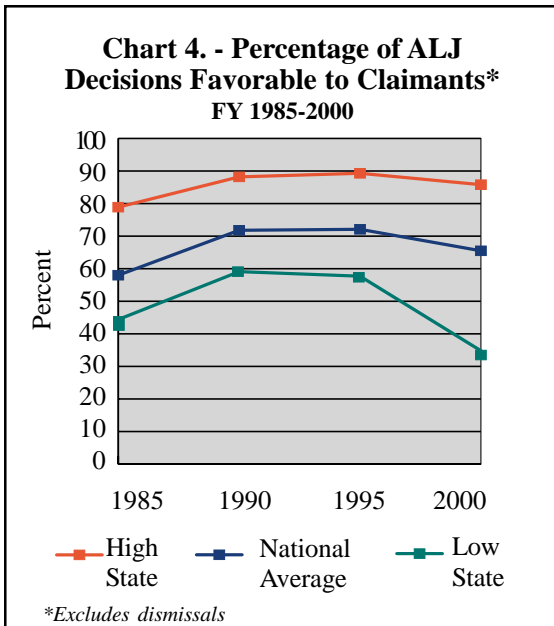
Claims denied by State agencies and appealed to the administrative law judge (ALJ) hearing level are more likely than not to be approved at the hearing level. The percent of cases reversed upon appeal to an ALJ hearing has varied over the years.



The percentage of decisions at the hearing level that were favorable for both DI and SSI claimants stood at 58 percent in 1985, grew to nearly 72 percent in 1995, fell to 63 percent in 1998, and grew again to 66 percent in 2000. Hearing offices also vary greatly from State to State in the percentage of decisions that are decided favorably for claimants. In 2000, the range went from 35 percent in the District of Columbia to 86 percent in Maine, with a national average of 66 percent.¹ (Chart 4)

¹ For further discussion and examples of differences in decision making, see the Advisory Board's January 2001 report, *Disability Decision Making: Data and Materials*.

A primary reason why the disability programs do not share the same level of public confidence as the retirement program is the perception that determinations of eligibility for disability are not being made in a uniform and consistent manner.



For many years both Members of Congress and others who have studied the disability programs have expressed concern about variations such as these. Analysts of the programs have identified many factors which they believe contribute to inconsistencies in outcomes, such as economic and demographic differences among regions of the country, court decisions, the fact that the claimant has no opportunity to meet with the decision maker until the face-to-face hearing at the ALJ level, and that the record remains open throughout the appeals process.

But many who are knowledgeable about the programs – including disability

examiners in the State agencies as well as administrative law judges – have long believed that there are also reasons relating to program policy, procedures, and structure that are responsible for some if not many of these inconsistencies.² As an example, there is a widely held belief that the agency’s quality assurance reviews, which are conducted by quality assurance units in each region of the country, are not being conducted in a uniform manner.

Despite these long-standing concerns, the agency has no effective mechanism to provide the information needed to understand the degree to which the programs’ own policies and procedures – including their uneven implementation – are causing inconsistent outcomes in different regions of the country and different parts of the disability system.

Given the lack of data, there is no way to assess the magnitude of the problem. But as long as variations in decision making remain unexplained, the integrity and the fairness of the disability programs are open to question. These programs are too valuable and important to the American public for this issue not to be addressed.

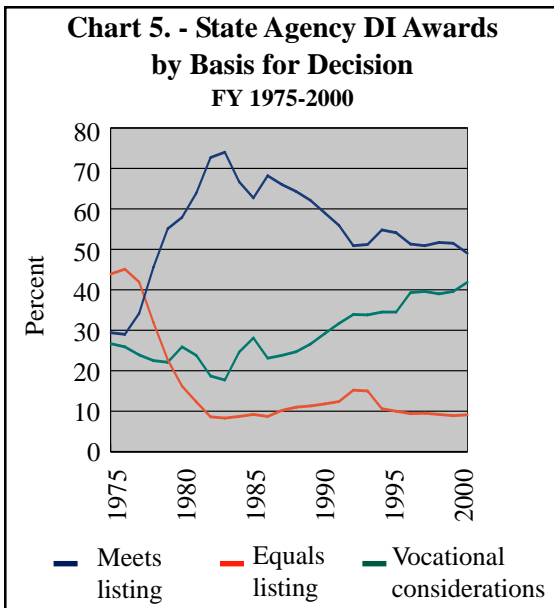
² A report completed by The Lewin Group, Inc. and Pugh Etinger McCarthy Associates, L.L.C. for the Social Security Administration in January 2001, titled *Evaluation of SSA’s Disability Quality Assurance (QA) Processes and Development of QA Options That Will Support the Long-Term Management of the Disability Program*, includes a discussion of program-related factors that may contribute to differences in decisional outcomes.

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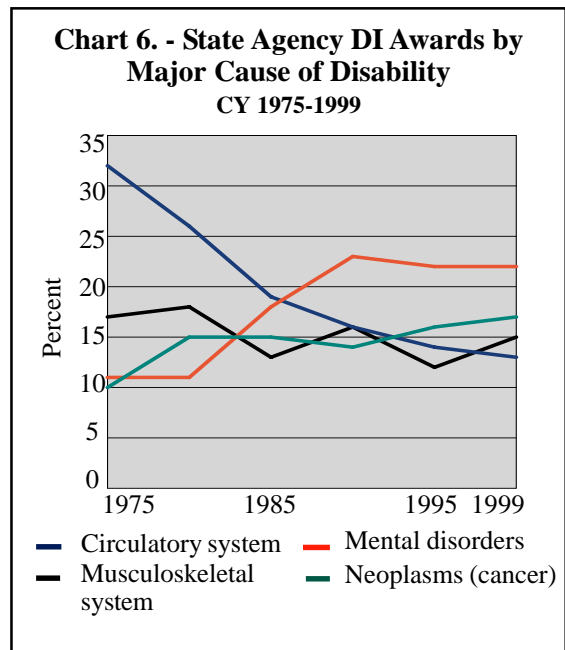
B. Is disability policy being developed coherently and in accord with the intent of the Congress?

The statutory definition of disability is broad and was designed to evolve in the light of subsequent administration and interpretation. Although Congress has not changed the law for more than 30 years, the determination of what constitutes disability has changed in fundamental ways.

For example, there has been a gradual but persistent trend away from decisions based on the medical listings to decisions that increasingly involve assessment of function. Since 1983, the percentage of DI claimants awarded benefits by State agencies on the basis of meeting or equating the medical listings has declined from 82 percent to 58 percent, while the percentage awarded on the basis of vocational considerations has more than doubled. (Chart 5)



A growing portion of claims involve allegations of mental impairment. Mental impairment has become the largest single reason for State agency DI awards, growing from 11 percent in 1980 to 22 percent in 1999. (Chart 6) Although data are not available, State agency administrators and examiners have told the Board that half or more of the



cases their offices process involve issues relating to mental impairment.

There have been other significant changes. Adjudicators must adhere to more detailed and intricate rules in weighing the opinion of treating sources than was the case in earlier years of the programs. They must make a finding on the credibility of claimants' statements about the effect of pain and other symptoms on their ability to function. The effect of these and other changes in disability

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policy is that disability decision making by both State agency examiners and administrative law judges has become considerably more subjective and complex.

These policy changes have occurred through changes in regulations and rulings. A number of the most significant changes have grown out of court decisions, many of which have not been appealed. None of them have been reviewed by the Congress and there is a question as to whether the

agency itself has adequately analyzed them from the perspective of –

- *whether the decisions that are being made reflect the intent of the Congress,*
- *whether they will improve consistency and fairness in decision making throughout the system, and*
- *whether they are operationally sustainable for a program that must process massive numbers of cases.*

C. Can today's administrative structure support future program needs?

When the Disability Insurance program was enacted in 1956, the expectation was that the program would be relatively small. But over the last half century, the original Federal-State administrative structure has had to accommodate a dramatic growth in program size and complexity that it has been ill-equipped to handle. In addition to working within a fragmented administrative structure, employees at all levels have been buffeted by periodic surges in workloads and funding shortfalls.

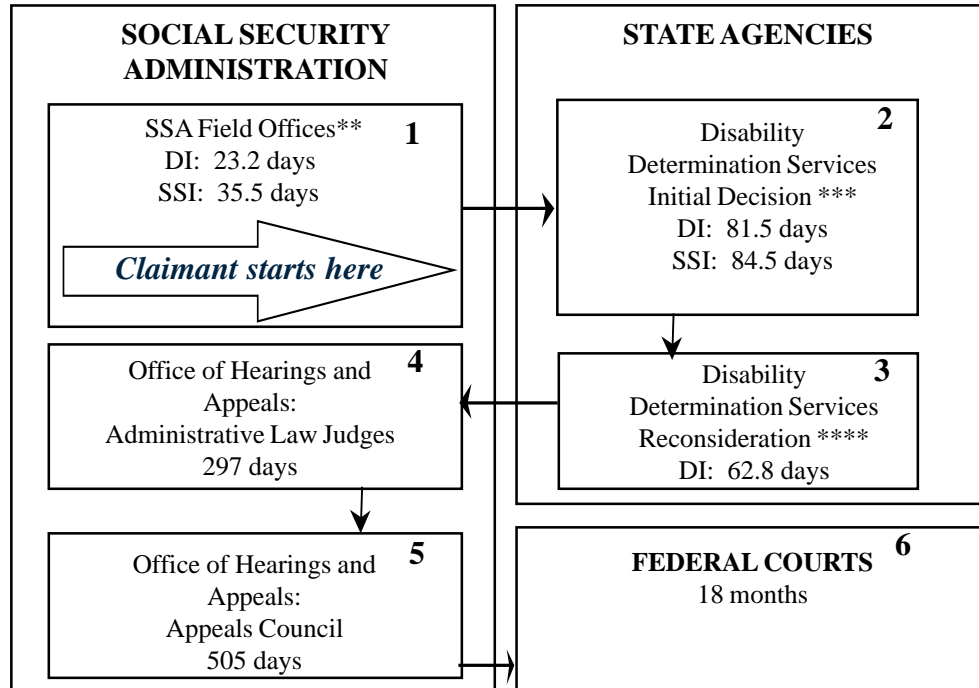
At the present time, all parts of the applications and appeals structure are

experiencing great stress, with every indication that the difficulties each is facing will continue to grow unless changes are made.

As the result of growth in the number of disability claimants and continued agency downsizing, field office personnel are no longer able to provide the kind of assistance many applicants need to file a properly documented claim. They lack the time to explain program rules and procedures so that applicants can understand whether they may meet the strict requirements of the Social Security disability definition and what items of information they need to document their case.

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**Chart 7. - DI and SSI Claims Process:
Steps and Average Processing Time*
FY 2000**



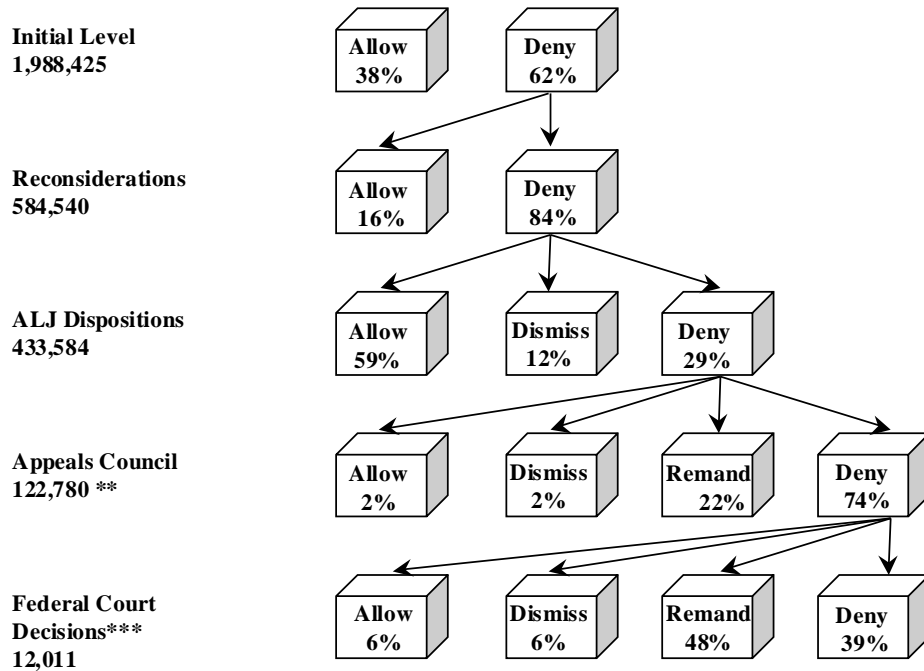
* Processing times shown above are additive.
 ** Field office processing time includes all components of the field office work, including taking the claim and processing it after the State agency makes a determination.
 *** SSA reports DDS initial processing time by programs; average total processing time (DI and SSI) is not available.
 **** SSA does not have data available for SSI reconsideration processing times.

The State agencies that make disability determinations on behalf of SSA face even more difficult challenges. At the same time that workloads are growing, SSA's regulations and rulings are requiring State agency examiners to make increasingly complex and subjective decisions. This means that State agencies should have ever more expert and experienced staff. Yet these agencies are bound by State-imposed rules relating to staff salaries and qualifications. Too frequently, either because of State limitations or because of inadequate Federal funding, the State agencies lack the ability to hire and retain qualified staff and to provide the training they need.

Many hearing offices have heavy loads of appeals and are struggling to keep up with their workloads. The popular wisdom is that claimants whose applications are denied by a State agency need only to pursue their claims at a hearing with an administrative law judge and they will likely be awarded benefits. The data tend to bear this out. About 80 percent of DI claims and 70 percent of SSI adult disability claims that are denied by the State agency at the reconsideration level are appealed to the hearing level. In 2000, more than 75 percent of all hearing level decisions were favorable in the case of DI claimants, and more than half were favorable in the case of SSI claimants.

Chart 8. - DI and SSI Disability Determinations and Appeals*

FY 2000



Total Allowances

	Number	Percent
Total	1,106,344	100.0
Initial Applications	759,191	68.6
Reconsiderations	90,805	8.2
ALJs	253,615	22.9
Appeals Council **	1,999	0.2
Federal Court ***	734	0.1

* Data relate to workloads processed (but not necessarily received) in fiscal year 2000, i.e., the cases processed at each adjudicative level may include cases received at 1 or more of the lower adjudicative levels prior to fiscal year 2000. Not all denials are appealed to the next level of review.

** Includes ALJ decisions not appealed further by the claimant but reviewed by the Appeals Council on "own motion" authority.

*** Remands to ALJs by the Appeals Council and Courts result in allowances in about 60 percent of the cases.

Today, there is far less policy guidance for the disability system by the Social Security Administration than was the case in earlier years.

Prior to 1972, a special office in Baltimore provided unified policy guidance to all State agency examiners by reviewing nearly all State agency decisions. When a Federal reviewer disagreed with the decision of an examiner, there was an exchange of views, a procedure that helped to further define the policy to be followed by all parts of the adjudicative system. Appeals to an administrative law judge were relatively infrequent in the early years of the program, reaching 27,000 in 1969, compared to about 490,000 in 2000.

There are currently about 15,000 disability adjudicators throughout the disability system. Their qualifications and the rules and procedures they follow differ, sometimes dramatically. In some instances, a State agency adjudicator may be a high school graduate with relatively limited experience. In others, the decision may be made by a highly-

educated and well-trained adjudicator with many years of experience.

Adjudicators may receive vastly different training and draw upon very different resources. For example, State agency adjudicators receive significantly more training on medical listings than do administrative law judges. As the result of court decisions, ALJs in some parts of the country make their decisions only after seeking the opinion of a vocational expert on whether an individual can perform work in the national economy. These experts are not used at the State agency level. At the hearing level, nearly all claimants now have an attorney or non-attorney representative. This development has greatly impacted the appeals process and, if it should extend to the State agency level, would have a major impact on the process at that level as well.

As noted earlier, the disability programs are expected to continue to grow substantially. Factors such as those described above raise questions about how well the administrative structure will be able to meet the challenge of this growing workload.

D. Is Social Security's definition of disability appropriately aligned with national disability policy?

There are many who believe that the Social Security Act definition of disability, which requires claimants to prove they cannot work in order to qualify for benefits, is inconsistent with the Americans with Disabilities Act (ADA) and is at odds with the desire of many disabled individuals who want to work but who still need some financial or medical assistance. Recent Ticket to Work

legislation is aimed at helping people who are already on the disability rolls to return to work by providing increased services and new incentives, but does not fully address these basic inconsistencies.

As the General Accounting Office recently testified, fundamental weaknesses remain. These include an eligibility determination

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