

Discussion of Program Administration Proposals

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This discussion is a summary of the comments made by the discussant at the SSDI Solutions Conference on August 4, 2015 before chapters were made final.

The three papers in this section address a number of important issues among the many that the Social Security disability system faces today—and, unfortunately, that it has been facing for decades.

The first paper, *Ending the Reconsideration Stage of SSDI Adjudication: More than Fifteen Years of Testing is Enough*, is by Jon Dubin. It is a well-researched and well-argued paper that proposes ending the reconsideration stage of Social Security Disability Insurance (SSDI) adjudication. The paper reminds us of arguments that have been made since at least the 1990s, and yet the agency has kept testing and maintaining uncertainty as to the future. I am sympathetic to Professor Dubin's proposal to end reconsideration, but I believe that change would be less likely to face negative consequences if the initial decision stage would first be made stronger. I think that making the following changes should be a high priority:

- (1) undertaking a vigorous ongoing national training program for Disability Determination Services (DDS) staff in all states that would improve the quality, consistency and the fairness of decision making throughout the country;
- (2) setting standards and providing ongoing training for all medical and vocational experts and medical consultants;
- (3) working to improve the quality of written decisions, so that claimants will understand the bases for negative decisions and judges will understand the reasoning of the DDS decision maker; (When I was special advisor to the commissioner for disability, I asked the quality office to share with me a random sample of DDS denial notices that had been sent to claimants. Almost universally, these notices provided no rationale that might persuade the claimant that the case had been carefully examined and considered. No wonder the claimant chooses to appeal!)
- (4) giving decision makers the tools they need to make sound decisions; (Creating a new and well-crafted Dictionary of Occupational Titles is a proposal that Professor Dubin wisely emphasizes in his paper. This is an improvement that the Social Security Administration (SSA) has worked on for a good number of years. It is past time to bring this effort to fruition.)
- (5) requiring SSA reviewers and analysts to make full use of the agency's Policy Feedback System to identify and correct errors in decision making—both allowances and denials.

In summary, by improving the first level of decision making I think we can acquire the positive information needed to convince policymakers and participants in the process that reconsideration can safely be eliminated. And that—I believe—will be the time to make the change.

Jeffery Wolfe, Dale Glendening, and David Engel's paper, *Social Security: Restructuring Disability Adjudication*, also proposes a change that is worthy of consideration. They propose that each hearing

office have what they refer to as a “referee,” or “PreP,” whose role would be to promote administrative justice for all parties in a disability proceeding. This proposal builds on previous proposals that called for establishing an adversarial procedure in the hearing office. There is merit in this proposal, but I believe it raises issues that need to be resolved. I would suggest that SSA solicit and analyze the views of judges and Hearing Office attorneys throughout the country. This could be done by holding teleconferences, requesting written views, or perhaps by holding regional meetings. But certainly those who have experience in the field should be involved in developing a plan for precisely how this would be implemented. And before a plan is put in place, it should be carefully tested and evaluated—perhaps in 15 or 20 offices in locations around the country.

Among the issues that need to be addressed is what the proposal would require in terms of additional funding, hiring, and training. The role of the PreP that they propose needs to be defined precisely. And, since this proposal specifies that the PreP should be part of the Office of General Counsel rather than the Hearing Office, it raises the issue of who will oversee the work of the PreP in each hearing office, and what would be the relationship of the PreP to the judge. Questions such as these are important to the efficient and effective operation of this proposed new configuration of the hearing procedure.

The *Data-Driven Solutions for Improving the Continuing Disability Review Process* paper was written by experts from the National Institutes of Health, Alex Constantin, Chunxiao Zhou, John Collins, and Julia Porcino. The paper emphasizes the value of enhancing decisions for purposes of the Continuing Disability Review (CDR) process, but the authors make clear that their detailed and carefully considered proposals for change in SSA’s data infrastructure and review process would strengthen decision making at all levels—an important enhancement to the disability decision process.

By improving the CDR process, as the authors of the paper propose, SSA would also promote the movement of disabled individuals into employment, an objective that is of great interest to a number of members of Congress as well as many others. I would suggest that SSA also develop a program to provide employment assistance to those who are expected to be or who are terminated through the CDR process. In addition, this would be an appropriate time to amend the budget process to provide that savings from performing CDRs be allocated to SSA on an annual basis to be used to cover CDR and related administrative costs.

There is another issue I consider to be of the highest priority, and which so far has not been discussed. After consulting with many of the agency’s ablest DDS and Hearing Office experts over the years, I am convinced that the most valuable improvement the agency could make is to improve the disability program policy. When I was working as a disability advisor to the Commissioner some years ago, and after extensive study and discussion among agency experts, we found broad agreement that there were many areas in which disability policy should be clarified, and regulatory language and operational procedures should be improved and made less confusing and subjective. In order to accomplish this objective, we proposed a new policy body. We referred to it as a Decision Review Board. I think that a variation of this proposal should be considered now. For example, I think the Commissioner should appoint a new review body composed of outstanding and experienced employees—representatives of DDSs, administrative law judges, administrative appeals judges, and attorneys with the Office of General Counsel who, together, will report directly to the Commissioner. They should serve on a rotational basis, with terms of two to three years or more in order to have time to consider and address issues that are causing inconsistency and error throughout the system.