



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

**Joint Hearing on**

**Eliminating the Social Security Disability Backlog**

**Subcommittee on Social Security  
Subcommittee on Income Security and Family Support  
House Committee on Ways & Means**

**March 24, 2009**

**Testimony of**

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Consortium for Citizens with Disabilities**

**On Behalf of:**

American Association of People with Disabilities  
American Council of the Blind  
Association of University Centers on Disabilities  
Bazelon Center for Mental Health Law  
Community AIDS National Network (TIICANN)  
Easter Seals  
Epilepsy Foundation  
National Alliance on Mental Illness  
National Association of Disability Representatives  
National Council for Community Behavioral Healthcare  
National Council on Independent Living  
National Disability Rights Network  
National Health Care for the Homeless Council  
National Law Center on Homelessness & Poverty  
National Multiple Sclerosis Society  
National Organization of Social Security Claimants' Representatives  
NISH  
Paralyzed Veterans of America  
The Arc of the United States  
United Cerebral Palsy  
United Spinal Association

# JOINT HEARING ON ELIMINATING THE SOCIAL SECURITY DISABILITY BACKLOG

## TESTIMONY OF PEGGY HATHAWAY, SOCIAL SECURITY TASK FORCE CONSORTIUM FOR CITIZENS WITH DISABILITIES

Chairman Tanner, Chairman McDermott, Ranking Member Johnson, Ranking Member Linder, and Members of the Subcommittees, thank you for inviting me to testify at today's hearing on Eliminating the Social Security Disability Backlog.

I am Vice-President for Public Policy of United Spinal Association.<sup>1</sup> I am here in my capacity as a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force (hereinafter "CCD") focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

The focus of this hearing is extremely important to people with disabilities. Title II and SSI cash benefits, along with the related Medicare and Medicaid benefits, are the means of survival for millions of individuals with severe disabilities. They rely on the Social Security Administration (SSA) to promptly and fairly adjudicate their applications for disability benefits. They also rely on the agency to handle many other actions critical to their well-being including: timely payment of their monthly Title II and SSI benefits to which they are entitled; accurate withholding of Medicare Parts B and D premiums; and timely determinations on post-entitlement issues that may arise (e.g., overpayments, income issues, prompt recording of earnings).

We recognize and appreciate that Commissioner Astrue has made reduction and elimination of the disability claims backlog a top priority. However, despite increases in productivity, the backlog in disability determinations continues to grow, at least in part due to an unexpected increase in the number of appeals.<sup>2</sup> People with severe disabilities are experiencing increasingly long delays and decreased services in accessing these critical benefits to which they are entitled. We believe these problems have been caused primarily by persistent under-funding of SSA over many years. We are encouraged by recent additional funding for SSA but we caution that it will be offset at least in part by the unexpected surge in both disability and retirement claims due to the economic crisis.

### **THE IMPACT ON PEOPLE WITH SEVERE DISABILITIES OF INSUFFICIENT FUNDING FOR SSA**

We must recognize the real-life impact of the backlog and the ensuing delays for individuals with disabilities who must file claims for disability benefits and wait for a decision. Behind the numbers are individuals with disabilities whose lives have unraveled while waiting for decisions – families are torn apart; homes are lost; medical conditions deteriorate; once stable financial security crumbles; and many individuals die. Numerous recent media reports across the country have also documented the suffering experienced by these individuals.

The National Organization of Social Security Claims Representatives (NOSSCR), a member of the CCD Social Security Task Force, recently conducted a quick survey of NOSSCR members for an update on the

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<sup>1</sup> United Spinal Association is an organization with members in all 50 states that has been securing equal rights and access for all Americans with spinal cord injuries and disorders since 1946 when it was formed by veterans paralyzed by World War II injuries. United Spinal Association is also an authorized VA Veterans Service Organization serving veterans with disabilities of all kinds.

<sup>2</sup> *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence, Annual Report FY 2008*, SSA Office of Disability Adjudication and Review ("SSA Backlog 08 Report").

impact of the backlog on claimants waiting for decisions on their claims. The stories are located at the end of this testimony beginning on page 11. Your constituent services staffs are likely to be well aware of the situations faced by people living in your districts and provide valuable assistance and help, where possible. An attorney in Jackson, TN, told us:

We hear on a daily basis how the claimants are struggling to keep their homes, obtain their needed medications, and seek proper medical attention. When we hear our clients' stories, the first thing we suggest to them is to contact Congressman Tanner's office. We inform them that his office is there to help them. Sometimes our office seeks assistance from Congressman Tanner's office on behalf of our clients. The staff at [his] office is always willing to assist .... However, despite efforts of Congressman Tanner's office, there is still a long wait time for our clients. Our clients are experiencing an average of 18 months from the time we file for their hearings until one is actually scheduled. For some of our clients, it has been three (3) years between the date they filed for their benefits and their hearing before the Administrative Law Judge. This delay has put an extreme hardship on all of our clients, but some are struggling more than others."

Many other claimants' representatives have similar stories about the impact of the long waits on their clients. Because many claimants have no access to health insurance while they wait for a decision, their health deteriorates because they cannot obtain necessary medical treatment, sometimes as simple as antibiotics. For those who can afford COBRA coverage, the lengthy wait goes beyond the period when they can extend the coverage. Sadly, many individuals die unnecessarily or commit suicide. One attorney in Georgia had at least six clients die over the last year while waiting for decisions. Appropriate family members are more frequently substituted as the claims proceed following the deaths of their loved ones.<sup>3</sup> Foreclosures have increased with claimants losing their homes and vehicles.

### **PERSISTENT UNDER-FUNDING OF SSA DESPITE INCREASED WORKLOADS**

In recent years, SSA's workload has increased dramatically due to an increase in the number of retirement and disability claims and addition of new SSA responsibilities. During the 5-year period from FY 2004 to FY 2008, retirement and survivors applications grew by 22 percent and Social Security disability claims grew 7 percent.<sup>4</sup> During the same period, applications for SSI disability/blindness grew by 11 percent and SSI aged applications grew by 77 percent.<sup>5</sup> Additional duties have been imposed on SSA, including implementation of new Medicare programs and verification for employment eligibility.<sup>6</sup>

Even though workloads increased from FY 2004 through FY 2008, SSA's staffing level decreased by 4 percent.<sup>7</sup> SSA's staffing level is currently about 61,000 Full Time Equivalents (FTE's) the lowest level since the early 1970's.<sup>8</sup> Moreover, many SSA employees have already taken early retirement and many

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<sup>3</sup> If a claimant dies while a claim is pending, the SSI rule for payment of past due benefits is very different – and far more limited – than the Title II rule. In an SSI case, the payment will be made in only two situations: (1) to a surviving spouse who was living with the claimant at the time of death or within six months of the death; or (2) to the parents of a minor child, if the child resided with the parents at the time of the child's death or within six months of the death. 42 U.S.C. § 1383(b)(1)(A) [Section 1631(b)(1)(A) of the Act]. In Title II, the Act provides rules for determining who may continue the claim, which includes: a surviving spouse; parents; children; and the legal representative of the estate. 42 U.S.C. § 404(d) [Section 202(d) of the Act]. Thus, if an adult SSI claimant (age 18 or older) dies before actually receiving the past due payment and if there is no surviving spouse, the claim dies with the claimant and no one is paid.

<sup>4</sup> *Social Security Administration: Workloads, Resources and Service Delivery*, p. 10, Kathleen Romig, Congressional Research Service, R40207, 2/6/09 (hereinafter CRS 2/6/09 Rpt), p. 3.

<sup>5</sup> *Id.* p. 4.

<sup>6</sup> *Id.* p. 6-8.

<sup>7</sup> *Id.* p. 11.

<sup>8</sup> *Id.* p. 11 and *SSA Major Strategic Accomplishments FY 2008*, p. 5.

more are eligible to retire.<sup>9</sup> SSA could soon be deprived of its most experienced and knowledgeable employees.

Despite the increase in workloads, SSA's administrative expenses (known as LAE – Limitation on Administrative Expenses) have, until recently, been persistently under-funded.<sup>10</sup> Every year from 1998 through 2007, the President's Budget requested less than the Commissioner's requested budget, and Congress appropriated even less than the President's request.<sup>11</sup> Between FY 2000 and 2007 alone, the resulting administrative shortfall was more than \$4 billion. The dramatic increase in the disability claims backlog coincides with this period of under-funding the agency, leaving people with severe disabilities to wait years to receive the benefits to which they are entitled.

In 2008, the tide finally changed for the first time in a decade, when Congress appropriated \$148 million over the President's budget.<sup>12</sup> This additional amount allowed the agency to hire some new Administrative Law Judges (ALJs) and other staff. However, given the many years of under-funding and the need for a \$400 million annual increase just to keep up with fixed costs,<sup>13</sup> additional funding is required to reduce and eliminate the backlog and to provide essential services to the public.

Building on the FY 2008 appropriation, three recent developments in funding for SSA's administrative expenses are encouraging:

- **Economic Stimulus legislation.** Pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), SSA received \$500 million to handle the unexpected surge in both retirement and disability applications due to the economic downturn. SSA also received badly needed funds to replace its aged National Computer Center.
- **FY 2009 appropriation.** The FY 2009 omnibus appropriations bill, just enacted this month, provides SSA with more than \$700 million over the final FY 2008 appropriation. With this increase and the ARRA funding, SSA expects to hire 5,000 to 6,000 new employees.
- **President's request for FY 2010.** President Obama's Budget Overview for FY 2010 provides \$11.6 billion in administrative expenses for SSA, a 10 percent increase over the FY 2009 appropriation.

These developments come at a critical moment because the economic downturn has led to an unexpected surge in benefit applications. The result has been an increase of 17 percent in retirement claims over one year ago (28 percent over two years) and a 10 percent increase in new disability claims through March 13 of this fiscal year. Pending initial disability claims are up 12.5 percent so far this year and hearings filed are up 9.5 percent, with numbers increasing as the recession deepens.

We urge support for the full \$11.6 billion FY 2010 appropriation for SSA's LAE. These increases will help SSA not only to significantly reduce the backlog, but also keep local offices open and better staffed, provide adequate telephone services to the public, and maintain the integrity of its programs by performing more continuing disability reviews and SSI redeterminations.

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<sup>9</sup> CRS 2/6/09 Rpt., p. 11.

<sup>10</sup> *Id.* See also OMB, Budget of the U.S. Government: Appendix, FY 1996-FY 2009; SSA Budget Justification FY 2002-FY 2009. *SSA Major Strategic Accomplishments*, FY 2008, p 5.

<sup>11</sup> CRS 2/6/09 Rpt, p. 10.

<sup>12</sup> *Id.* p. 9.

<sup>13</sup> *Id.* p. 10.

**Performing Program Integrity Activities.** The processing of continuing disability reviews (CDRs) and SSI redeterminations is necessary to protect program integrity and avert improper payments. Failure to conduct the full complement of these activities has adverse consequences for the federal budget and the deficit. According to SSA, every \$1 spent on CDRs yields \$10 in program savings, and every \$1 spent on SSI redeterminations yields \$7 in program savings.<sup>14</sup> However, the number of reviews actually conducted is directly related to whether SSA receives the necessary funds.

President Obama's FY 2010 budget request includes \$759 million for SSA program integrity work. We support this request, but it is important to note that there is a tradeoff between program integrity efforts and efforts to reduce the disability backlog and process new claims, given the limited capacity of the state Disability Determination Services (DDSs). DDS workers are trying to keep up with the unexpected surge in applications due to the economic downturn, and some of the same DDS personnel process CDRs. An increase in staff attention to one function is likely to result in decreased performance in the other, which could lead to more delays in the processing of new claims.

### **IMPACT OF UNDER-FUNDING ON SSA FIELD OFFICES AND THE STATE DDSs**

**SSA field offices.** In addition to concerns regarding the disability claims backlog, SSA field offices are experiencing significant increases in the volume of their work and service difficulties. A recent Government Accountability Office (GAO) study found that the number of field office staff fell 4.4 percent from FY 2005 to 2008.<sup>15</sup> GAO found that at least 51 percent of customers calling field offices had at least one previously unanswered call, and in FY 2007, over one million customers waited for over an hour to be served.<sup>16</sup>

**State DDSs.** The state Disability Determination Services (DDSs), which determine whether a claimant is disabled, experienced a 7 percent increase in disability applications for the last quarter of 2008, compared to the last quarter of 2007.<sup>17</sup> Yet during the 5 year period from FY 2004 through FY 2008, the number of DDS staff declined by 8 percent.<sup>18</sup> To make the problem worse, even though DDS salaries, offices and overhead are fully funded by SSA, due to severe state budget problems, some states are imposing hiring restrictions and furloughs of employees including DDS workers.<sup>19</sup> Commissioner Astrue has written to Governors asking them to exempt DDS from these hiring freezes and furloughs – which exacerbate staffing shortages and severely affect the processing of disability claims.<sup>20</sup>

### **THE HEARING LEVEL: PROCESSING TIMES HAVE REACHED INTOLERABLE LEVELS FOR CLAIMANTS**

The most significant delays in SSA's disability determination process are at the hearing level. The average processing time for cases at the hearing level has increased dramatically since 2000, when the average time was 274 days.<sup>21</sup> In the current fiscal year, SSA estimates that the average processing time

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<sup>14</sup> CRS 2/6/09 Rpt, p. 23 and 24.

<sup>15</sup> *SSA Service Delivery Plan Needed to Address Baby Boom Retirement Challenges*, Government Accountability Office Report GAO-09-24, January 2009, p. 2 and 3 (hereinafter "GAO 1/09 Report").

<sup>16</sup> *Id.*

<sup>17</sup> NADE, Statement for the Record Regarding Possible and Previously Imposed Furloughs of DDS State & Consideration of the Potential Impact of Hiring Freezes on DDS Services, 1/15/09 ("NADE Stmt 1/15/09")

<sup>18</sup> CRS 2/6/09 Rpt, p. 13.

<sup>19</sup> NADE Stmt 1/15/09. Some or all DDS employees have been furloughed in California, Massachusetts, Maryland and Oregon. Hiring freezing are affecting DDSs in Indiana, Maine, Washington and Wisconsin. Florida is considering a pay cut.

<sup>20</sup> Commissioner Astrue Asks Governors to Exempt State DDS Employees from Hiring Restrictions, SSA Press Release 2/3/09.

<sup>21</sup> *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, GAO-08-40 (Dec. 2007) ("GAO 12/07 Report"), p. 22.

for disability claims at the hearing level will be 506 days,<sup>22</sup> or nearly 17 months. We appreciate the effort by SSA to reduce the processing time, but an average of 17 months – close to one and a half years – is still too long for individuals waiting for a hearing decision. In addition, the average processing times at the initial and reconsideration levels have grown over the last ten years by about 20 days at each level, with some cases taking much longer.<sup>23</sup>

The current processing times in some hearing offices are striking, and much longer than the 506 days targeted by SSA in FY 2009. Through February 2009, SSA statistics for 149 hearing offices<sup>24</sup> indicate that the average processing time was 499 days. It is important to keep in mind that this is an “average” and that many claimants will wait longer. However, the average processing time at 61 offices – 41 percent – was above the 499 day February 2009 national average, with 26 offices over 600 days and 7 offices over 700 days.

Hearing offices more than one month over the current national average include: Tampa, FL (532 days); Minneapolis, MN (536 days); Nashville, TN (547 days); Los Angeles, CA-West (554 days); Bronx, NY (590 days); Milwaukee, WI (594 days); Birmingham, AL (614 days); Detroit, MI (643 days); Columbus, OH (640 days); Atlanta, GA-North (668 days); Miami, FL (674 days); and Oak Park, MI (714 days).

Other hearing office statistics reflect the lengthy waits that claimants must face. The “average age of pending” cases at nearly one-third of the offices is above the national average of 313 days, with wide variation. Perhaps even more disturbing is the extremely large disparity in the average caseload of ALJs – currently ranging from around 300 to 1442 cases per ALJ, with an average of 670.

**Is the Hearing Backlog Improving?** The number of pending cases has increased dramatically since 1999, reaching an all-time record high of 768,540 cases in December 2008. Through February 2009, the number dropped slightly to 765,527, but has not dropped below 760,000 since June 2008. In a recent report, the Government Accountability Office (GAO) noted that the hearing level backlog was “almost eliminated” from FY 1997 to FY 1999, but then grew “unabated” by FY 2006.<sup>25</sup> The number of pending cases at the hearing level reached a low in FY 1999 at 311,958 cases.

We remain concerned about the impact of the current economic downturn on the backlog. The number of hearing requests has increased 9.5 percent during the first 5 months of FY 2009, compared to the same period in FY 2008. This hearing level increase does not yet reflect the additional and unexpected 9.6 percent increase this year in the number of initial applications over the same period last year. As a result, we can expect to see an additional surge of hearing requests when the new application cases, attributable to the recession, reach the hearing level.

**The impact of staffing on the hearing backlog.** Over the last decade, concurrent with the marked increase in the disability claims backlog, we have noted the loss of ALJs and support staff in hearing offices around the country. Former Commissioner Barnhart had planned to hire an additional 100 ALJs in FY 2006 but due to cuts in the President’s budget request, she was able to hire only 43. The real impact of the burden on the current ALJ corps can be seen by comparing statistics from 1998 and 2006. In FY 1998, there were 1,087 ALJs available to conduct hearings. This number dropped to 1,018 in FY 2006, while the number of pending cases more than doubled.<sup>26</sup>

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<sup>22</sup> *Social Security Administration: Fiscal Year 2009 Justification of Estimates for Appropriations Committees* (“SSA FY 09 Budget Justification”), p. 6. Available at: <http://www.ssa.gov/budget/2009cjapp.pdf>.

<sup>23</sup> GAO 12/07 Report, p. 20.

<sup>24</sup> “National Ranking Report by Average Processing Time” (Hearing Offices) for the Month Ending February 27, 2009.

<sup>25</sup> GAO 12/07 Report, p. 20.

<sup>26</sup> GAO 12/07 Report, p. 31.

SSA received funding in FY 2008 to hire approximately 190 new Administrative Law Judges and some additional support staff. However, productivity is not related solely to the number of ALJs, but also to the number of support staff. According to the GAO: “By the close of fiscal year 2006, SSA saw the highest level of backlogged claims and the lowest ratio of support staff over this period [FY 1997 to FY 2006].”<sup>27</sup> While SSA senior managers and ALJs recommend a staffing ratio of 5.25,<sup>28</sup> in 2006, the ratio of support staff to ALJs was 4.12. The actual ratio represented nearly a 25 percent decrease from the recommended level, at a time when the number of pending cases had increased dramatically. When the support staff to ALJ ratio was higher (FY 1999 to FY 2001),<sup>29</sup> the number of pending cases older than 270 days was much lower.

In a recent report, the SSA Office of Inspector General (OIG) found that ALJs with higher disposition levels were more likely to be in hearing offices with staffing ratios above the FY 2007 national average of 4.46 staff members per ALJ. The OIG found that hearing offices ranked in the top half for productivity were “much more likely to exceed the national average staff ratio than hearing offices ranked in the lower half for productivity.”<sup>30</sup> The quality and composition of staff also must be considered. As the OIG points out: “[A]n office may have an ideal staff ratio, but if it does not have enough writers to prepare decisions or if the writers do not prepare quality decisions, the hearing office’s productivity may be impacted negatively.”<sup>31</sup> This concern may account for the February 2009 statistics that show a mounting number of pending cases for decision writers, about 9,000 more pending cases waiting for a decision than one year ago, despite a significant increase in the number of decision writers.

## **IMPROVING THE DISABILITY CLAIMS PROCESS AND ELIMINATING THE BACKLOG**

Money alone will not solve SSA’s crisis in meeting its responsibilities. Commissioner Astrue is committed to finding new ways to work better and more efficiently. CCD has numerous suggestions for improving the disability claims process for people with disabilities. We believe that these recommendations and agency initiatives, which overall are not controversial and which we generally support, can go a long way towards reducing, and eventually eliminating, the disability claims backlog.

### **Caution Regarding the Search for Efficiencies**

While we generally support the goal of achieving increased efficiency throughout the adjudicatory process, we caution that limits must be placed on the goal of administrative efficiency for efficiency’s sake alone. The purposes of the Social Security and SSI programs are to provide cash benefits to those who need them and have earned them and who meet the eligibility criteria. While there may be ways to improve the decision-making process from the perspective of the adjudicators, the critical measure for assessing initiatives for achieving administrative efficiencies must be how they affect the very claimants and beneficiaries for whom the system exists.

People who find they cannot work at a sustained and substantial level are faced with a myriad of personal, family, and financial circumstances that will have an impact on how well or efficiently they can maneuver the complex system for determining eligibility. Many claimants will not be successful in addressing all of SSA’s requirements for proving eligibility until they reach a point where they request the assistance of an experienced representative. Many face educational barriers and/or significant barriers inherent in the

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<sup>27</sup> GAO 12/07 Report, p. 32.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Congressional Response Report: Administrative Law Judge and Hearing Office Performance*, No. A-07-08-28094 (Aug. 2008)(“OIG 8/08 Report”)(available at: [www.ssa.gov/oig/ADOBEPDF/A-07-08-28094.pdf](http://www.ssa.gov/oig/ADOBEPDF/A-07-08-28094.pdf)). This report was requested by the previous Chairman of the Social Security Subcommittee, Rep. Michael McNulty, and by Ranking Member Sam Johnson.

<sup>31</sup> OIG 8/08 Report, p. 6.

disability itself that prevent them from understanding their role in the adjudicatory process and from efficiently and effectively assisting in gathering evidence. Still others are faced with having no “medical home” to call upon for assistance in submitting evidence, given their lack of health insurance over the course of many years. Many are experiencing extreme hardship from the loss of earned income, often living through the break-up of their family and/or becoming homeless, with few resources - financial, emotional, or otherwise - to rely upon. Still others experience all of the above limits on their abilities to participate effectively in the process.

Proposals for increasing administrative efficiencies must bend to the realities of claimants’ lives and accept that people face innumerable obstacles at the time they apply for disability benefits and beyond. SSA must continue, and improve, its established role in ensuring that a claim is fully developed before a decision is made and must ensure that its rules reflect this administrative responsibility.

### **Technological Improvements**

Commissioner Astrue has made a strong commitment to improve and expand the technology used in the disability determination process. CCD generally supports these efforts to improve the disability claims process, so long as they do not infringe on claimants’ rights. Some of the technological improvements that we believe can help reduce the backlog include the following:

**1. The electronic disability folder.** The initiative to process disability claims electronically has the prospect of significantly reducing delays caused by the moving and handing-off of folders, allowing for immediate access by different components of SSA or the DDS, and preventing misfiled evidence.

**2. Expanding Internet access for representatives.** Electronic Records Express (ERE) is an SSA initiative to increase the use of electronic options for submitting records to the electronic folder for disability claims. Registered claimant representatives are able to submit evidence electronically through an SSA secure website or to a dedicated fax number, using a unique barcode assigned to the claim. While this initiative holds great promise, significant problems with the current process exist. Under the current process, representatives are to be provided with a CD of the exhibited or “pulled” file shortly before the hearing and earlier in the process after the appeal has been filed. Due to staffing shortages in hearing offices, representatives have frequently had problems obtaining the CDs and often find that all of the medical records they have submitted are not part of the exhibited list of evidence used at the hearing. This can cause significant delay both during and after the hearing.

We hope that these problems will be resolved in the near future. A group of representatives is involved in an SSA pilot that allows them to download the contents of electronic folders through the ERE website. Once SSA resolves security and authentication issues, we hope that the agency will begin to rollout this initiative. It should make the hearing process more efficient for all parties involved.

**3. Use of video hearings.** Video hearings allow ALJs to conduct hearings without being at the same geographical site as the claimant and representative and have the potential to reduce processing times and increase productivity. We support the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected; the quality of video teleconference hearings is assured; and the claimant retains the absolute right to have an in-person hearing as provided under current regulations.<sup>32</sup> However, we have received complaints from representatives that, in some cases, ALJs are discouraging claimants from exercising their right to an in-person hearing. A new SSA pilot allows representatives to participate in video hearings from their own private offices, with their clients present in the representative’s office. The representative must agree to the terms established by SSA. This pilot provides claimants with another option for their hearings.

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<sup>32</sup> 20 C.F.R. §§ 404.936 and 416.1436.

## Other Improvements at the Hearing Level

**1. The Senior Attorney Program.** This program allows senior staff attorneys in hearing offices to issue fully favorable decisions in cases that can be decided without a hearing (i.e. “on the record”). We are pleased that Commissioner Astrue decided to authorize the program for at least the next two years.<sup>33</sup> In FY 2008, senior attorneys decided 24,575 cases. Through February 2009, the program is on pace to exceed last year’s total, with 13,462 cases decided through the first five months of this fiscal year.<sup>34</sup>

**2. Informal remands to DDSs.** Under this initiative, SSA screens pending hearing level cases according to a profile and remands the cases to the DDSs for possible favorable decisions. In FY 2008, hearing offices remanded more than 50,000 cases and the DDSs reversed their prior decisions and allowed 16,838 cases, about 32 percent of the remanded cases,<sup>35</sup> with the remainder returned to hearing offices for a hearing and decision. Claimants do not lose their place in the queue if the remanded case is sent back to the hearing office. When the FY 2008 informal remand allowances are combined with the senior attorney allowances, more than 41,400 claimants received favorable decisions – and the benefits to which they are entitled – in a more timely way.

Generally, we support this initiative. However, the procedures used by DDSs have not been uniform and vary from state to state, with some representatives reporting that they are not notified that a remand has taken place so that they can assist with development of evidence.

**3. Findings Integrated Templates (FIT).** FIT is used for ALJ decisions and integrates the ALJ’s findings of fact into the body of the decision. While the FIT does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision. Representatives can use the FIT template, which is available on the SSA website, to draft proposed favorable decisions. Many representatives are now using the template either when requested by the ALJ or on their own initiative. When the draft proposed decision is submitted to the ALJ, it can lead to a speedier decision.

**4. Increase time for hearing notice.** We have previously recommended that the time for providing advance notice of the hearing date be increased from the current 20 days to 75 days. This increase will allow more time to obtain medical evidence before the hearing. The 75-day time period has been in effect in SSA’s Region I states since August 2006<sup>36</sup> and, based on reports from representatives, has worked well.

## Improvements at the Initial Levels

CCD supports initiatives to improve the process at the initial levels so that the correct decision can be made at the earliest point possible and unnecessary appeals can be avoided. Improvements at the front end of the process can have a significant beneficial impact on preventing the backlog and delays later in the appeals process.

**1. New Screening Initiatives.** We support SSA’s efforts to accelerate decisions and develop new mechanisms for expedited eligibility throughout the application and review process. We encourage the use of ongoing screening as claimants obtain more documentation to support their applications. However, SSA must work to ensure that there is no negative inference when a claim is not selected by the screening tool or allowed at that initial evaluation. There are two initiatives that hold promise:

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<sup>33</sup> The interim final rule reinstating the program was published in August 2007 and became effective on October 9, 2007. 72 Fed. Reg. 44763 (Aug. 9, 2007). The final rule was published at 73 Fed. Reg. 11349 (Mar. 3, 2008).

<sup>34</sup> “National Caseload Analysis Report: ODAR Workload and Performance Summary for the Month Ending Feb. 27, 2009.”

<sup>35</sup> *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence: Annual Report Fiscal Year 2008* (SSA, ODAR).

Available at: [http://www.ssa.gov/appeals/Backlog\\_Reports/Annual\\_Backlog\\_Report\\_FY\\_2008-Jan.pdf](http://www.ssa.gov/appeals/Backlog_Reports/Annual_Backlog_Report_FY_2008-Jan.pdf).

<sup>36</sup> 20 C.F.R. § 405.315(a).

- **Quick Disability Determinations.** We have supported the Quick Disability Determination (QDD) process since it first began in SSA Region I states in August 2006 and was expanded nationwide by Commissioner Astrue in September 2007.<sup>37</sup> The QDD process has the potential of providing a prompt disability decision to those claimants who are the most severely disabled. Since its inception, the vast majority of QDD cases have been decided favorably in less than 20 days.

- **Compassionate Allowances.** In July 2007, SSA published an Advance Notice of Proposed Rulemaking (ANPRM) on a proposed new screening mechanism to be known as Compassionate Allowances.<sup>38</sup> SSA is “investigating methods of making ‘compassionate allowances’ by quickly identifying individuals with obvious disabilities.” While there is no definition of disabilities that are considered “obvious,” there is emphasis on creating “an extensive list of impairments that we [SSA] can allow quickly with minimal objective medical evidence that is based on clinical signs or laboratory findings or a combination of both...” SSA has published an initial list of 50 conditions on its website, with more to be added at a later date. Unlike the QDD screening, which occurs only when an application is filed, screening for compassionate allowances can occur at any level of the administrative appeals process.

**2. Improve development of evidence earlier in the process.** In previous testimony, CCD has made a number of recommendations to ensure that disability claims are properly developed at the beginning of the process. Claimants’ representatives are often able to provide evidence that we believe could have been obtained by the DDSs earlier in the process. Our recommendations include:

- **Provide more assistance to claimants at the application level.** At the beginning of the process, SSA should explain to the claimant what evidence is important and necessary. SSA should also provide applicants with more help completing the application, particularly in light of electronic filings, so that all impairments and sources of information are identified, including non-physician and other professional sources.

- **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. However, DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. SSA should review its own forms and set standards for state-specific forms to ensure higher quality.

- **Increase reimbursement rates for providers.** To improve provider response to requests for records, appropriate reimbursement rates for medical records and reports need to be established. Appropriate rates should also be paid for consultative examinations and for medical experts.

- **Provide better explanations to medical providers.** SSA and DDSs should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and ask for evidence relevant to the standard.

- **Provide more training and guidance to adjudicators.** Many reversals at the appeals levels are due to earlier erroneous application of existing SSA policy. Additional training should be provided on important evaluation rules such as: weighing medical evidence, including treating source opinions; the role of non-physician evidence;<sup>39</sup> the evaluation of mental impairments, pain, and other subjective symptoms; the evaluation of childhood disability; and the use of the Social Security Rulings.

- **Improve the quality of consultative examinations.** Steps should be taken to improve the quality of the consultative examination (CE) process. There are far too many reports of inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant’s.

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<sup>37</sup> 20 C.F.R. §§ 404.1619 and 416.1019.

<sup>38</sup> 72 Fed. Reg. 41649 (July 31, 2007).

<sup>39</sup> This evidence is often given little or no weight even though SSA’s regulations provide that once an impairment is medically established, all types of probative evidence, e.g., medical, non-physician medical, or lay evidence, will be considered to determine the severity of the limitations imposed by the impairment(s).

## ADDITIONAL RECOMMENDATIONS

In addition to addressing the backlog and SSA's funding issues, there are several other legislative proposals that the Subcommittee may be considering this year.

- **Protecting claimants' privacy rights.** We understand that it can be cumbersome for SSA to obtain medical records, as it is for claimants and their representatives, and that SSA is exploring more efficient ways to secure the necessary evidence. While we support ways to make this process more efficient, we believe that claimants' privacy rights must be protected. We will work with SSA to find a way to obtain, as efficiently as possible, a claimant's authorization for release of medical records to SSA, while protecting the individual's privacy rights.
- **Extension of the fee demonstrations in the SSPA.** Access to experienced and qualified representatives through the lengthy and complex application process is critically important to claimants. To this end, we support allowing claimants to enter into voluntary agreements with representatives for fee withholding and direct payment procedures whether under Title II or Title XVI. The Social Security Protection Act of 2004 (SSPA), P.L.108-203, established two demonstration projects that we believe should be made permanent because they have proven to be effective in increasing claimants' access to effective representation: (1) Extension of the Title II attorney fee withholding and direct payment procedures to claims under Title XVI (SSI); and (2) Allowing non-attorney representatives to qualify for fee withholding and direct payment provided they meet certain requirements. Unless they are extended or made permanent, the demonstrations will sunset March 1, 2010.
- **Increase and indexing of the fee cap.** Rep. John Lewis has introduced H. R. 1093, which contains two provisions regarding the current \$5,300 fee agreement fee cap: (1) Increase the current fee cap to \$6,264.50 (which represents the figure if it had been adjusted for inflation since the last increase in 2002); and (2) Index the fee cap for future years to the annual COLA. We support these changes since they ensure that there will be a knowledgeable, experienced pool of representatives available to represent claimants.
- **Work incentives.** The Ticket to Work and Work Incentives Improvement Act (TWWIAA) was enacted nearly ten years ago and is overdue for evaluation of its effectiveness in employment of those receiving Title II and XVI disability benefits. We urge renewal and permanent extension of expired/expiring provisions including (1) SSA's Title II demonstration authority to test promising approaches for work incentives and related provisions; (2) Demonstration to Maintain Independence, set to expire this year, to provide Medicaid buy-in coverage to working individuals whose conditions or disabilities are not yet severe enough to qualify them for disability benefits; (3) Protection and Advocacy for Beneficiaries of Social Security, set to expire this year, to protect the rights of beneficiaries as they attempt to return to work; and (4) Work Incentives Planning Assistance, set to expire this year, which provides state grants for outreach and education to individuals with disabilities about supports and services regarding employment.
- **Caution about e-Verify.** E-Verify is an automated system for employers to verify the name/SSN/citizenship/work authorization of new hires by checking against SSA and Department of Homeland Security databases. SSA's workload has expanded rapidly due to demand by employers and new state laws mandating requiring use of this system.<sup>40</sup> The problem is that the e-Verify system is hampered by inaccuracies in the DHS and SSA records. Mandating large numbers of employers to use it would require in an unknown but substantial number of U.S. citizens and legal immigrants to interact with SSA to verify their employment eligibility status and provide documents to prove that they are eligible to

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<sup>40</sup> GAO 1/09 Report, p. 10.

work. The additional burden of this labor-intensive work could divert resources from SSA's core duties including making disability determinations within a reasonable time. It is essential that any proposal that would increase the use of e-Verify should only be enacted if it fully funds the resulting increased administrative burden on SSA and if the databases are accurate regarding employment.

• **Staffing shortages cause serious post-entitlement problems for beneficiaries.** When beneficiaries faithfully notify SSA of earnings or other changes that may reduce their benefit payment amounts, due to staffing shortages<sup>41</sup> it may be months or years before SSA sends an overpayment notice to the beneficiary, demanding repayment of sometimes tens of thousands of dollars of accrued overpayments. It is shocking to beneficiaries to receive these notices, when they reasonably assumed that SSA had processed the information they submitted, and it is challenging if not impossible for someone subsisting on benefits alone to repay the overpayments. It would be helpful for SSA to develop a better reporting and recording system and promptly adjust benefit payments –thus preventing these overpayments. It is important to note that, in and of themselves, overpayments do not indicate fraud or abuse as beneficiaries are encouraged to work if they are able. The problems arise when reported earnings are not properly recorded and monthly overpayments are not properly adjusted.

### **CLAIMANT STORIES PROVIDED BY REPRESENTATIVES IN MARCH 2009**

#### **FLORIDA**

◆ Mr. O was a 53 year old Wal-Mart cashier in Bradenton, Florida. He developed HIV in the mid 1980s, and continued to work until 2006 when his condition deteriorated and he was diagnosed with AIDS. He filed his application for Title II and SSI disability benefits soon thereafter in early 2006. While waiting for his hearing, he suffered a brain aneurysm and died in 2008. An estate was opened and the estate representative was substituted on the disability claim. The ALJ denied the request for an on-the-record decision, despite the numerous medical reports documenting that Mr. O's condition clearly met the impairment listing for HIV. In the meantime, the autopsy report showed that the brain aneurysm was most likely caused by Mr. O's deterioration due to AIDS and its complications. They are still waiting for a hearing date.

◆ Mr. M is a 57 year old man who worked as a Vocational Rehabilitation Specialist for over 20 years in Florida. He developed severe arthritis throughout his body, wears bilateral hand splints, knee splints, has developed severe joint degeneration, spinal cord degeneration, is agoraphobic, depressed, and anxious. He cannot take care of himself and he has no family to help him. He is about to lose his home. Mr. M has exhausted his savings and his attorney writes monthly letters to his mortgage company asking for extensions on his payments while he is waiting for his hearing. Nevertheless, the company is about to foreclose on his home.

#### **GEORGIA**

◆ Mr. C lives in Kennesaw, GA. Despite having only a 9th grade education, he has worked all of his adult life. He had back surgery many years ago, but continued working. His back pain became worse and worse until he was unable to work. He has degenerative disc disease throughout his back and herniated discs, some of which press on nerve roots, and depression. As a result of his back disorders, he has severe back pain, which radiates down into his legs. He must walk with a cane and can only obtain relief with narcotic medications. Mr. C filed for a hearing in November 2006 and a request for an on-the-record decision was filed by his attorney. Despite numerous attempts to follow-up with the hearing office, no decision has been reached and no hearing has been scheduled, 27 months after the hearing request was filed. Not only is Mr. C's condition adversely affected by this great delay, but he is unable to support his children.

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<sup>41</sup> GAO 1/09 Report. P. 10-12

◆ Mr. D lives in Doraville, GA. He was diagnosed with chronic hepatitis C with cirrhosis. He continued working, but became increasingly symptomatic with severe fatigue, bone pain, and numbness and tingling in his legs and feet. He also has severe depression and anxiety. As early as June 2007, his doctor stated Mr. C was suffering from very advanced and terminal hepatitis C. Mr. C is now bedridden and must depend on his girlfriend for all of his support. Mr. C filed an application for Social Security and SSI disability benefits in March 2007. The claim was denied and a request for a hearing was filed in October 2007. Mr. D's attorney filed a request for an on-the-record decision as a TERI (terminal) case. Despite numerous follow-ups to the hearing office, the only response has been to transfer his case to the National Hearing Center. To date, no hearing has been scheduled.

## **IOWA**

◆ Mr. H lives in southeast Iowa and has been diagnosed with multiple sclerosis. He has a number of lesions in his brain, has difficulty walking, and suffers from debilitating fatigue. He has not been able to work since July 2007, and his claim has been pending since September 2007. He sent a letter to his attorney, which states:

To Whom It May Concern: I am writing this brief letter to tell you about a few of the examples of what this disease has caused. Besides the day to day struggle just to live it has caused my wife and me, along with our 2 children, financial ruin. My mortgage payment is as much as my wife makes. I receive no other income and worry day to day how to exist. As far as what this has done to my state of mind, I am finding it impossible to keep fighting this and feel like giving up. As bad as this may sound, I have actually tried to end this with a suicide attempt in November 2008. There isn't any way to describe this except to say it feels hopeless and wonder if there's any hope.

## **MARYLAND**

◆ Mr. X, is a 57 year old Army veteran. Once his claim was allowed, he still had to wait for 120 days to get his retroactive benefits of \$50,000. Each time he called the local SSA field office in Prince Georges County, Maryland, he was told there was "nothing we can do." On one occasion, they told him "do not call any more." Meanwhile, the veteran was forced to file for Chapter 13 bankruptcy, and almost lost his home. It took 16 months from the reconsideration denial to the hearing decision.

◆ Ms. Y is 50 years old and only speaks Spanish. She waited 90 days to receive her past due benefits and had considerable problems with the field office, which could not find a Spanish interpreter. As a result, there was marked confusion about the SSI offset against the Title II benefits, and she could not obtain a Medicare card. Ms. Y is indigent and homeless and she is currently living with a relative. She is in dire need of medical services. From reconsideration to hearing, it took about 20 months.

◆ Ms. F is a 43 year old Army veteran. Her case has been pending since 2006. Her hearing was just held but no decision has been issued. She filed for Chapter 13 bankruptcy. She is in dire need of medical care and desperately needs Medicare eligibility. She is now homeless.

## **MISSOURI**

◆ Mr. D, from the Trenton, MO, area, was diagnosed with multiple sclerosis. His truck was repossessed and his home was threatened with foreclosure. The local chapter of the MS Society advanced him six months of house payments to save the home. His hearing was scheduled but then delayed for two months, even as an "expedited hearing" because the vocational expert's copy of the electronic record on a CD was corrupted when he received it so he could not prepare to testify for the original hearing date. Eventually, Mr. D received a favorable decision and was able to keep his home.

◆ Mr. M, in his mid-40s, committed suicide because of his inability to afford medical care and take care of his family while waiting for a hearing. He had suffered horrible burns while pouring asphalt on his former job.

◆ Ms. N died while waiting for her hearing. Her attorney had attempted on three occasions to get an on-the-record decision but received no response from the hearing office. Ms. N died from medical complications related to her disabling conditions. At her death, she was virtually homeless, living in dilapidated travel trailer. Tragically, both her child and husband also died while she was waiting for a hearing.

## **NEW JERSEY**

◆ Ms. W. lives in Newark, NJ. She previously worked as a counselor, laboratory technician, and outreach coordinator for various medical facilities. She has been diagnosed with major depression, anxiety disorder, and post-traumatic stress disorder. She applied for Social Security disability benefits in December 2007. She was denied through the reconsideration level (11 months after she applied) and requested a hearing in December 2008. Ms. W. has been sued for foreclosure and cannot afford her mortgage. If she were approved for benefits, she could afford to stay in her house, but it is not clear that she will have her hearing before it is too late and she loses her home.

◆ Ms. L, a resident of New Jersey, is a 57 year old former junior college instructor who has long-standing problems with arthritis and depression. Her case has been pending for over three years from the date the application was filed. As a result, she has been forced to take out home equity loans of more than \$70,000 against her home. She can no longer borrow against her home as she has no visible means of repaying her obligations. She has borrowed from every friend or family member she knows in order to make payments on her loans. Currently, she has a payment plan for \$400 per month that she is unlikely to be able to meet. She can no longer afford to see doctors or pay for her medications. Her case has been pending at the hearing level for ten months. Her attorney has asked that the case be expedited in light of her imminent homelessness and he is hopeful that will happen. If it is not expedited, she could wait an additional six months. She calls her attorney every week and cries.

◆ While waiting for her hearing, a woman in the Atlantic City, NJ area almost lost her apartment because of non-payment of rent. She had such severe mental problems that her attorney knew that if the client was forced to relocate to a smaller apartment, without her belongings, the client's mental health would deteriorate further. The attorney has tried to keep the client in her apartment while waiting for a hearing, which was requested in August 2007. The hearing was not held until February 2009, and they are waiting for a decision.

## **OHIO**

◆ Mr. N is a 55 year old former maintenance supervisor who lives in Chillicothe, OH. He has small vessel ischemia, cerebrovascular disease, lumbar scoliosis, degenerative joint disease, vision loss, migraine headaches, depression, anxiety, fatigue, memory loss, and partial paralysis to his left side caused from two strokes. Mr. N filed his request for hearing in September 2007. While waiting for a hearing, he has had five liens put on his home, and does not have medical insurance to receive the medical treatment that he needs. His primary care physician has discussed his treatment options and has explained that his health will continue to decline, and that it is crucial for him to receive treatment as soon as possible.

◆ Ms. L was a 60 year old woman with a 12th grade education whose past work included kitchen helper and clothing folder. She lived in Eaton, OH, and suffered from pain and loss of range of motion due to a 2004 fractured right shoulder and right knee, with three unsuccessful surgeries which prevented her from working. Ms. L filed an application for Social Security disability benefits on June 15, 2006, alleging onset of disability in 2004 when she suffered the fractures. She developed rectal cancer in late 2006, and

died on October 29, 2007, at the age of 60. A hearing was held with a substituted party on January 8, 2009, 14 months after her death, at which time she was found disabled as of the 2004 date through the date of her death.

- ◆ Mr. W, a 37 year old fork lift driver from Columbus, OH, has a head injury and bipolar disorder, which prevent him from working. He filed his application for disability benefits in November 2006. While waiting for a hearing, he and his family were evicted from their apartment and his wife left him. He is living in a house with a friend and is unable to pay rent. However, when he is awarded benefits, he will owe back payment for the rent and continues to fall further into debt.
- ◆ Mr. P, a 60 year old data entry person who lived in Columbus, OH, had back and knee problems, epilepsy, and number of infections that kept occurring throughout his body. He filed his application for disability benefits on April 25, 2006. While waiting for a hearing, Mr. P became increasingly ill due to infection and chronic lymphedema. He died on December 11, 2007. An on-the-record favorable decision was made on October 9, 2008, ten months after his death. Mr. P was found disabled as of May 1, 2002 (four years before he applied for benefits) through the date of his death.
- ◆ A 57-year old quality-control inspector in Ohio with severe macular degeneration and uncontrolled high blood pressure applied for disability benefits in February 2008. He has exhausted all of his savings and, out of desperation, had to take in a boarder, but that income is not enough to keep the heat and lights on. His attorney filed his request for a hearing in November 2008, and told him to be prepared for an 18 to 24 month wait in the Cleveland, OH area, unless the ALJ issues an on-the-record decision or there is an informal remand to the DDS.
- ◆ Mr. S, who lives in the Cleveland, OH area, has peripheral vascular disease and severe arthritis in his right shoulder requiring surgery. While waiting 27 months for his hearing, he lived with various relatives, including his ex-wife and mother. Without any source of funds to purchase prescriptions, he used the \$25 jury duty pay, after being called for jury duty. This allowed him to afford the \$5 co-pay on his prescriptions at the county hospital where they have a sliding scale. A fully favorable bench decision was issued by the ALJ on the day of his hearing.
- ◆ Ms. T, from the Cleveland, OH area, waited 29 months for her hearing. She has been diagnosed with borderline intellectual functioning and epilepsy. While waiting for a hearing, she exhausted her time limit for TANF benefits and nearly lost her home. Her mother used her own income tax refund to save it from foreclosure, and then tried to make small payments on the utilities so that Ms. S and her children, aged 5 and 7, would have lights and heat.
- ◆ Mr. C, a 48 year old men's clothing salesman from the Cleveland, OH area, struggled for years with severe rheumatoid arthritis. He had undergone one hip replacement and needed another. When his savings ran out while trying to afford COBRA premiums, he would regularly call his attorney to help him. He applied for benefits in April 2007. He was fortunate enough to win "quickly" at the reconsideration stage, 13 months later, but it was too late to save his house, which he lost to foreclosure.
- ◆ Mr. A, a factory worker, lives in the Cleveland, OH area and is 46 years old. He had returned to work for 10 years after a rare but successful kidney/pancreas transplant. But finally, he applied for disability benefits because his gout and joint pain, requiring multiple knee and shoulder surgeries, plus weakness after a mild stroke, became too much for him to bear. His wife was diagnosed with cancer herself while his case was pending and she could no longer work or take care of him. Thanks to an expedited hearing, he won his case 19 months after he applied in August 2007.

◆ Mr. G is a 34 year old graphite factory worker with severe mental illness and Hepatitis C. He calls his attorney frequently to let her know that he is at the mental health crisis center again or staying with someone he met there. He was evicted last summer and has no regular place to live. His attorney worries that he may harm himself out of sheer desperation. His attorney filed a request for hearing in October 2008, but must continually tell him that he must steel himself for what could be the full 18 to 24 month wait that the Cleveland hearing office warns about in its notice.

◆ Ms. C is a 50 year old cook who tried to hold onto her part-time job at a tavern, but even the 10 hours per week got to be too much. Her back, leg and bladder problems finally led the owner to let her to go. She was so ashamed that she cried when she resorted to asking the local probate court for a loan against the funds being held for her son (based on a court settlement years ago). She did this in desperation because she did not know how else to hold onto her house. Her 16 year old son agreed that the court should allow her to access the funds, because he could not bear to see his mother under the stress. Ms. C was eventually allowed disability benefits and she repaid the money right away after she received her past due benefits.

◆ Mr. F is a 35 year old factory worker with borderline intellectual functioning. He worked for years as a laborer, then stayed home with his children while his wife went to school. He fell off a ladder while trying to clean out his father's gutters and shattered his heel, requiring surgery. He now has an MRI showing multiple fractured vertebrae, probably also a result of the fall a year and a half ago. The family has already lost their house. When his attorney filed the request for hearing last summer and told him it could be another year or two before his hearing, he and his wife and their three small children were sleeping in a tent in his parents' backyard. They hoped that when the weather got too cold, they would be able to move into the living room to sleep on the floor at night.

## **OKLAHOMA**

◆ Mr. L lived in Norman, OK, and obtained representation in April 2008, upon receiving the initial denial of his Social Security disability claim. His attorney immediately requested reconsideration. His attorney explained to him that it most likely would be at least two to three months before he would receive a decision on the request for reconsideration; that most reconsideration requests result in another denial; and, if denied on reconsideration, it would be about one year before a hearing would be scheduled. The attorney obtained and submitted additional hospital records of the claimant's emergency treatment for acute exacerbation of asthma which occasionally required intubation.

A mere two weeks after the appeal was filed, Mr. L's claim was denied at reconsideration in May 2008. Upon learning of the denial, the claimant committed suicide. His surviving spouse has been substituted and they are presently awaiting a hearing on the request for hearing that was filed in June 2008. In late February 2009, the hearing office notified Mr. L's attorney that the claim was "ready for review." The attorney responded that all evidence has been submitted and that the claim should be scheduled for a hearing. To date, no hearing has been scheduled. The individual's medical records do not reflect treatment for any mental disorders.

## **OREGON**

◆ An attorney in Eugene, OR, received a call in 2006 from Mr. E who lived in a rural Oregon town and was chronically mentally ill. He had heard from a social worker that the attorney coordinated a federally funded project called HOPE that helped chronically homeless disabled people apply for benefits. (Unfortunately, this project ended in 2008 and has not been re-funded.) He had been living outdoors for at least 10 years. He heard voices that told him to do bad things, including stealing from stores, which lead to multiple terms of incarceration. He also was in terrible physical pain. The attorney arranged transportation to her office and assisted him in filing for SSI disability benefits. His claim was denied at

the initial and reconsideration levels because of a lack of evidence. Meanwhile, Mr. E spent another winter in the snow and rain, in terrible pain. He finally had a date set for hearing but a few days before his hearing, his stomach hurt so much that his brother persuaded Mr. E to go to the emergency room. He was diagnosed with end-stage pancreatic cancer. He brought a letter to the ALJ from the emergency room doctor verifying that he had less than 6 months to live. The ALJ immediately approved the claim without a hearing, but the claimant died three days later, before he ever received a check.

## **PENNSYLVANIA**

◆ Mr. D lives in Dalmatia, PA. He is a veteran of the Vietnam War and is a victim of Agent Orange and has other war-related health and mental problems. He had obtained a favorable decision on his Social Security disability claim. However, because of a mix-up at SSA, it was nearly two years until his attorney was able to straighten out his payments. He has a son with the same name and the SSA system had the two individuals mixed in with each other. While waiting for his payments, Mr. D's house went up for a Sheriff's sale, after foreclosure. Two days before the sale, he called his attorney, crying, and said that he had no more reason to live. Out of sheer desperation, they called Rep. John Kanjorski's office, which was able to help get the Sheriff's sale postponed. Further, within two weeks, someone at SSA was trying to straighten out the mix-up. Within two months, the payments started. Mr. D's attorney notes that he does not believe this would have been accomplished if Rep. Kanjorski's office had not intervened.

◆ Mr. W lives in Wilkes-Barre, PA, and is waiting for an expedited hearing. He has Stage III colon cancer, yet his disability benefits claim was denied. He is undergoing infusion therapy at home. He called his attorney to say that he has no money to pay his rent and does not know where he will be living next month. Despite repeated requests for an expedited hearing, no hearing is scheduled.

◆ A little girl from Plymouth, PA, was the victim of sexual abuse at the age of 2 and was left with both mental and physical problems that will stay with her for her entire life. She cannot function in school due to anger issues and fear of men. She has had to undergo surgery for injuries related to the sexual abuse and will probably have additional surgeries throughout her life. Her parents applied, on her behalf, for childhood SSI disability benefits. They received a favorable decision, but it took nearly 17 months.

◆ Ms. L is 50 years old and lives in Pennsylvania. She has been diagnosed with cirrhosis of the liver caused by Hepatitis C. Although she has finally received a hearing date, the wait has been a struggle for her. She has had her utilities shut off, her car repossessed, and her health has worsened. Ms. L's medical care is very costly. She has been non-responsive to certain treatments for her cirrhosis and is now on the liver transplant list.

## **SOUTH CAROLINA**

◆ Ms. S was 38 year old woman who had uncontrolled diabetes. Ms. S lived in her sister's home with her own two teenage children. She did not qualify for Medicaid under South Carolina guidelines because she had not yet been found disabled by SSA. Since she had no treating physician, every time her blood sugar went too high or too low, her sister took her to the local emergency room (ER) where she was given treatment. She continually complained to the ER staff that she had a sore on her right foot that would not heal. No one evaluated her for this because they were concerned with getting her blood sugar under control. Every ER visit had notations of her unhealing sores but provided no treatment.

Eventually, the unhealing sores on her right foot got so bad that one night at the ER, she and her sister insisted that the doctor look at her foot. Once the doctor saw her foot, she was immediately admitted and the next day her leg was amputated below the knee. However, the surgeon who amputated her leg stated he could not remove all of the leg that needed to be removed as it would be too much of a shock to her system and he wanted to wait until the following week. The sores were so bad that even with the

amputation, osteomyelitis had set in and before the surgeon could perform the next amputation, Ms. S died. The cause of death on the Death Certificate said "Complications of Diabetes".

Records for every ER visit to that hospital and other hospitals were submitted for consideration to the ALJ. By the time the case was set for hearing, Ms. S's sister was the substituted party. By the time all the Exhibits were labeled, there were 52 ER visits and 14 inpatient visits in 18 months. Yet no on-the-record decision was granted even though it was requested. At the hearing, Ms. S's sister described the pain and agony her deceased sister had gone through. At the hearing, the ALJ stated it was obvious that Ms. S had been disabled as of her alleged onset date and he issued a fully favorable decision. However, there were no family members who could receive the past due benefits. As a result, the family had to find the money for Ms. S's funeral costs. Neither the hospitals nor the surgeon will be paid for their services, because there was no Medicaid coverage due to no SSI benefits being paid.

The hearing delay led to a lack of medical care for Ms. S under the Medicaid program (based on SSI eligibility), which most likely would have saved Ms. S's life.

◆ Mr. C was 42 years old client with a long history of coronary artery disease and morbid obesity. It took 22 months to get a hearing and by the time the hearing took place, Mr. C had died from a massive heart attack. Mr. C's mother was substituted. Mr. C's representative provided records at the hearing level from 15 ER visits where Mr. C had been taken, unconscious, by ambulance. In addition, the attorney provided over 30 ER and inpatient admissions for coronary artery disease with chest pain, shortness of breath, and the inability of the medical staff to find pulses in various parts of Mr. C's body. Mr. C was prescribed 7 cardiac medications for hypertension, chest pain, and hypercholesterolemia. At the ALJ hearing, his mother testified there were other ER visits that her son had forgotten to mention to anyone, including the attorney, because he could not keep track of all of them. One of the reasons for this memory problem was that his hypertension caused such severe headaches that sometimes he simply forgot that his family or emergency services had taken him to the ER. Despite all of this evidence and Mr. C's cause of death, the ALJ denied the claim. The ALJ denial has been appealed to the Appeals Council.

◆ Mr. O has been waiting 19 months for a hearing in South Carolina. He has a multitude of orthopedic problems as well as post-traumatic stress disorder. Six months ago, Mr. O was bitten by a brown recluse spider and was admitted to the local hospital for 8 days where he was put on IV antibiotics and then told to follow up with his regular treating physician. [These spiders have a powerful poison in their bite which can cause necrosis of soft tissue and more serious symptoms.] Mr. O has no money or insurance and is not eligible for Medicaid. Because he cannot obtain medical care, including antibiotics, Mr. O has been trying to take care of the wound himself. It is getting worse and he has been told that if he does obtain antibiotic treatment soon, he will lose his entire left leg as the infected wound is only inches from his left hip. If his hearing had been held sooner, he could have obtained the treatment he needed for the bite and he could have received treatment for his orthopedic problems and possibly returned to work.

## **TENNESSEE**

◆ A 50 year old man who lives in Alamo, TN, has non-alcoholic steatohepatitis, advanced hepatic fibrosis, cirrhosis (end stage liver disease), esophagus varices, chronic obstructive pulmonary disease, and myeloproliferative disease. He lost his TennCare insurance in November 2008. He is not able to obtain his needed medication or seek the proper medical treatment needed to monitor his impairments. He was also recently diagnosed with four bulging discs that are impinging on nerves. He filed his application for disability benefits on February 13, 2007, and his attorney requested a hearing on May 28, 2008. His attorney anticipates that this client will have to wait until the end of 2009 or early 2010 before his ALJ hearing.

- ◆ A 47 year old woman who lives in Milan, TN, is now in a wheelchair because she is unable to obtain the medical testing to determine what is wrong with her knees. The biggest roadblock to the necessary testing is that she has no medical insurance. She filed for disability benefits in February 2007 and a hearing was requested in February 2008. This is an extremely long period of time between the application date and the hearing request date. In this case, her attorney requested reconsideration (the first administrative appeal) in June 2007. However, the paperwork was lost. When her attorney's office called to check the status in October 2007, there was no record that the reconsideration request was filed. This caused an additional four months of delay.
- ◆ Mrs. J., from Camden, TN, applied for widow's disability benefits in October 2007, when she was 50 years old. She has chronic obstructive pulmonary disorder (COPD). Before the loss of health insurance, she was able to have oxygen at home. At her husband's death, she had no income, no health insurance, no car, and no telephone. She lived far away from her treating source, the Carroll County (TN) Health Department. Mrs. J. was denied at reconsideration in June 2008 and filed a request for an ALJ hearing the same month. In November 2008, during a very cold period, she had no heat and a neighbor gave her a wood stove. However, she put her health at even more risk as her former lung specialist did not want her to be around wood smoke, but Mrs. J had no choice. She also had no gas money for a trip to the health department. Her attorney requested an on-the-record decision, which was granted, and the ALJ issued a favorable decision in January 2009.
- ◆ Mrs. B. lives in Dyersburg, TN. She stays with an alcoholic, abusive husband because she has little choice for alternative housing. She obtained representation in November 2006. She had a hearing in February 2007. The ALJ denied the claim and she appealed in March 2007. The Appeals Council remanded the case for a new hearing more than 18 months later in October 2008. Her attorney called the hearing office about the status of the new hearing in February 2009. The hearing office claimed it did not know about the remand order. Her attorney immediately faxed the order to the hearing office. Since then, her attorney has called the hearing office and left two messages to confirm receipt of the remand order but no one has returned the calls.
- ◆ Mr. T. is homeless. Relatives and friends in the Dyersburg, TN, area allow him to occasionally stay with them. He obtained representation for his disability claim in May, 2005. He formerly lived in another state and a hearing request was pending in a third state. His attorney was able to request a transfer but the claims file was mistakenly sent to the Selmer, TN SSA field office and was eventually forwarded to the Memphis hearing office. His first hearing was held in October 2005 and denied in December 2005. He filed an appeal to the Appeals Council in December 2005 and the Appeals Council issued a remand order in August 2006. The remand hearing was scheduled to be held in Memphis, some 90 miles from where Mr. T is living. He had great difficulty collecting money for transportation to the hearing. The remand hearing was held in August 2007 and denied once again. Mr. T appealed to the Appeals Council for a second time in September 2007. He is still waiting for a decision from the Appeals Council, 18 months later.
- ◆ Mrs. X, a 43 year old radiology/CT scan tech, lives in Clarksville, TN. She is unable to work due to diabetes, depression, anxiety disorder, fluid and arthritis in her knees, spondylothesis, spinal stenosis, degenerative disc disease, broad based disc bulges and severe pain and weakness in both legs. She filed her application for disability benefits in June 2007. While waiting for her hearing, Mrs. X and her family have been evicted from their home. Both of their vehicles have been repossessed, and they are having extreme difficulties paying for their day to day living. Her husband is on the verge of being laid off and, if that happens, there will be no income at all for this family. Due to the backlog, this claimant and her family may lose everything before she is able to get a hearing date and decision.

- ◆ Ms. A is 61 years old and lives in Milan, TN. She has Major Depressive Disorder, which prevents her from working. She filed her application for benefits in 2007. Ms. A's hearing has not yet been scheduled but her attorney has requested an on-the-record decision. She and her husband, who is currently employed, were forced to file for Chapter 7 bankruptcy in order to keep their house. The majority of her husband's check is going to the bankruptcy trustee each pay period, leaving them with only \$4 to \$27 per pay period for all of their other expenses, such as groceries and utilities
- ◆ Mr. C was a 57 year old man who lived in Big Sandy, TN. He was diagnosed with hypertension and renal dysfunction. His application for benefits was filed in 2006; however, before a hearing could be scheduled, Mr. C died in June 2007. His widow was substituted as the party and was able to obtain a favorable decision without a hearing, but not until August 2008. It took over six months for the payment center to process the claim and release the funds to Mr. C's widow.
- ◆ Mr. S is 36 years old and lives in Madison County, TN. He has musculoskeletal impairments and obesity, which prevent him from working. He filed his application for benefits in 2007 and was approved in late 2008, after his attorney requested an on-the-record decision. However, while his claim was pending, he lost his home, his wife left him, and his mother has taken him in.
- ◆ Mr. D, a 48 year old man who lives in Gibson County, TN, has musculoskeletal impairments. He filed his application for disability benefits in 2007. Mr. D's hearing has not yet been scheduled. He has lost his home and his wife left him. He is essentially homeless, living with various family members and friends.
- ◆ Mr. W is 53 years old and currently lives in Haywood County, TN. He has been diagnosed with musculoskeletal impairments. He filed his application for disability benefits in late 2004. It was denied and he had to appeal the case to federal district court. The court remanded the case, but not until mid to late 2008. After a remand hearing in 2009, his claim was allowed. However, while waiting for the decision, he lost his home and has had to live with various family members.
- ◆ Ms. M, a 58-year old woman who lives in Dyer County, TN, has musculoskeletal and mental impairments. She initially filed her application for benefits in 2004. A hearing was held in September 2005; however, a decision was not issued until January 2007. The decision was unfavorable and was appealed to the Appeals Council in February 2007. More than two years later after the appeal was filed, and five years after the application was filed, the Appeals Council has not yet made a decision on Ms. M's claim. She is essentially homeless, living with friends or family members.

## **TEXAS**

- ◆ Mr. A is 45 years old and lives with his wife in Mission, TX. He has degenerative disc disease of the lumbar spine status post lumbar laminectomy, major depressive disorder, and borderline intellectual functioning, which prevent him from working. He filed his application in September 2003. The claim was denied initially in November 2003 and at reconsideration in February 2004 and he requested a hearing a few days later. While waiting for a hearing, Mr. A's house burned down in November 2004. His hearing was finally held in June 2006, more than two years after he filed his appeal. The hearing was continued in order to obtain a psychological consultative examination and a supplemental hearing was held in July 2007. The ALJ denied the claim and on appeal, the Appeals Council remanded the case back to the ALJ. During this period, Mr. A was forced to file for bankruptcy. He had a remand hearing in February 2009 before the same ALJ who previously denied his case. At the remand hearing, the ALJ announced he would be awarding a fully favorable decision, but Mr. A has not yet received the decision.
- ◆ Mr. R is 48 years old and lives in San Antonio, TX. He has back pain, joint pain, hearing problems, Hepatitis C, and a head injury, which prevent him from working. He filed his application for benefits in

January 2007. While waiting for a hearing, he became homeless and cannot receive proper medical attention. Mr. R has to rely on the kindness of friends for his basic necessities.

**WEST VIRGINIA**

◆ Ms. M is 42 years old from West Virginia. She has several conditions that prevent her from working. She has been diagnosed with bipolar disorder, and neck and back problems. She filed her application for benefits in the winter of 2007. She struggles daily with worsening of her health and financial needs. Her medical care is costly. She has tried to work several times but is currently on assistance. She has lost her home while waiting for a hearing.

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Thank you for the opportunity to testify today. For people with disabilities, it is critical that SSA be given enough funding to make disability decisions in a timely manner, improve its process for making disability determinations, and carry out its other mandated workloads.

We also support changes to improve the disability claims process so long as those changes do not affect the fairness of the procedures used to determine disability and the rights of claimants.

**ON BEHALF OF:**

American Association of People with Disabilities American Council of the Blind Association of University Centers on Disabilities Bazelon Center for Mental Health Law Community AIDS National Network (TIICANN) Easter Seals Epilepsy Foundation National Alliance on Mental Illness National Association of Disability Representatives National Council for Community Behavioral Healthcare	National Council on Independent Living National Disability Rights Network National Health Care for the Homeless Council National Law Center on Homelessness & Poverty National Multiple Sclerosis Society National Organization of Social Security Claimants' Representatives NISH Paralyzed Veterans of America The Arc of the United States United Cerebral Palsy United Spinal Association
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