

**The National Council of Social Security Management Associations, Inc.
GREYSTONE GROUP WASHINGTON REPORT
Hearing Report 05-2010
May 5, 2010**

**Joint Hearing on Social Security Disability Claims Backlogs
United States House of Representatives
Committee on Ways and Means
Subcommittee on Income Security and Family Support
and Subcommittee on Social Security
April 27, 2010**

Subcommittee Members Present

Subcommittee on Income Security and Family Support

Chairman Jim McDermott (D-7th-WA)

Click here to view Chairman Jim McDermott's opening statement:

<http://waysandmeans.house.gov/Hearings/OpeningStatement.aspx?OSID=3056>

Click here to watch Chairman Jim McDermott's opening statement:

<http://www.youtube.com/watch?v=icJ9kDxGnHI>

Representative John Lewis (D-5th-GA)
Representative Shelley Berkley (D-1st-NV)
Representative Chris Van Hollen, Jr. (D-8th-MD)
Representative Sander Levin (D-12th-MI)
Representative Danny K. Davis (D-7th-IL)

Ranking Member John Linder (R-7th-GA)

Click here to view Ranking Member John Linder's opening statement:

<http://www.republicans.waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=183551>

Representative Peter J. Roskam (R-6th-IL)

Subcommittee on Social Security

Chairman Earl Pomeroy (D-At Large-ND)

Click here to view Chairman Earl Pomeroy's opening statement:

<http://waysandmeans.house.gov/Hearings/OpeningStatement.aspx?OSID=3055>

Click here to watch Chairman Earl Pomeroy's opening statement:

<http://www.youtube.com/watch?v=BGU5K6OXOoc>

Representative John S. Tanner (D-8th-TN)
Representative Allyson Y. Schwartz (D-13th-PA)
Representative Xavier Becerra (D-31st-CA)
Representative Lloyd Doggett (D-25th-TX)

Representative Linda T. Sanchez (D-39th-CA)
Representative John A. Yarmuth (D-3rd-KY)

Ranking Member Sam Johnson (R-3rd-TX)

Click here to view Ranking Member Sam Johnson's opening statement:

<http://www.republicans.waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=183552>

Witnesses

Panel 1:

The Honorable Bob Filner (D-51st-CA), a Representative in Congress from the State of California

Click here to view Congressman Filner's testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Filner_Testimony.pdf

Click here to watch Congressman Filner's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8471>

Panel 2:

The Honorable Michael J. Astrue, Commissioner, Social Security Administration

Click here to view the Commissioner's written testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Astrue_Testimony.pdf

Click here to watch the Commissioner's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8472>

Panel 3:

Dan Bertoni, Director for Disability Issues Education, Workforce & Income Security Team, U.S. Government Accountability Office

Click here to view Dan Bertoni's written testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Bertoni_Testimony.pdf

Click here to watch Dan Bertoni's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8473>

The Honorable Patrick P. O'Carroll, Inspector General, Social Security Administration

Click here to view Patrick O'Carroll's written testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_OCarroll_Testimony.pdf

Click here to watch Patrick O'Carroll's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8474>

Nancy Shor, Executive Director, National Organization of Social Security Claimants' Representatives, Englewood Cliffs, New Jersey on behalf of the Consortium for Citizens with Disabilities Social Security Task Force

Click here to view Nancy Shor's written testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Shor_Testimony.pdf

Click here to watch Nancy Shor's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8475>

The Honorable D. Randall Frye, Administrative Law Judge, Kings Mountain, North Carolina on behalf of the Association of Administrative Law Judges

Click here to view Randall Frye's written testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Frye_Testimony.pdf

Click here to watch Randall Frye's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8476>

Eddie Willrich, Deputy Sheriff, Harris County Sheriff's Office, Houston, Texas, accompanied by **Carol Durkin**, Special Agent and Team Leader, Cooperative Disability Investigation Unit, Houston, Texas

Click here to view Eddie Willrich's written testimony:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Willrich_Testimony.pdf

Click here to watch Eddie Willrich's oral testimony:

<http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=8477>

Hearing Summary

On April 27, 2010, the House Ways and Means Subcommittee on Income Security and Family Support and the Subcommittee on Social Security held a joint hearing on the Social Security disability claims backlog. In recent years the Ways and Means Committee and Subcommittees have held a number of hearings on SSA's efforts to reduce its unprecedented backlog in Social Security and Supplemental Security Income disability claims.

By December of 2008, the backlog of disability appeals reached an historic high, with greater than 768,000 Americans awaiting a hearing decision. In response Congress provided increases in administrative funding in FY 2008 through FY 2010 to begin to reduce the hearings backlog and address other service delivery shortfalls.

Incoming applications for disability have increased significantly due to the recession, which has added yet another challenge to reducing the number of backlogged claims.

The Social Security Administration (SSA) is undertaking a number of initiatives to try and reduce the hearings backlog, some of which have generated some concern. The joint hearing was scheduled to examine current disability backlogs, as well as the different initiatives SSA is undertaking to try and reduce them.

In announcing the hearing, Subcommittee on Social Security Chairman Earl Pomeroy (D-At Large-ND) said, **"Americans with severe disabilities cannot afford to wait years to receive benefits they desperately need and to which they are entitled. Congress has made it a priority to provide SSA with the funding needed to reduce the lengthy wait times for disability hearings and I am very pleased to see the progress made on this front. However, it is essential that SSA continue to receive the needed resources. We must also ensure that**

the agency has an aggressive plan to address the growing backlog in initial claims, and that initiatives to address the backlogs do not inadvertently result in harm to disability applicants. This hearing will provide an opportunity to examine these concerns more closely.”

Subcommittee on Income Security and Family Support Chairman Jim McDermott (D-7th-WA) commented, **“As is the case with all Federal agencies that serve needy Americans, the demand for Social Security’s services has skyrocketed in the recession. Despite meaningful efforts and initial success in addressing the hearings backlog, I have grave concerns that the increased demand, both as a result of the economy and of our nation's aging population, will outpace these efforts.”**

The hearing began with an opening statement from the Chairman of the House Ways and Means Subcommittee on Income Security and Family Support, Representative Jim McDermott (D-7th-WA). Chairman McDermott stated that across the country at this moment, 784,000 Americans are waiting on their initial disability claims, and 695,000 claimants whose applications were denied are waiting for a hearing on their appeal. He added that disability claimants will wait an average of 111 days for an initial decision and appellants will wait an average of 442 days, in addition to delays at earlier stages. Chairman McDermott stressed that of course this data is essential in tracking progress and maintaining accountability, but that it is very important to remember that each of those numbers represents the life of a vulnerable human being.

Chairman McDermott closed by stating that he does not expect the agency to perform miracles with limited funding and extreme staffing shortages. He noted that SSA has operated with an insufficient funding level for a number of years and that he will continue to work with his congressional colleagues and the Administration to address that issue.

Ranking Member of the House Ways and Means Subcommittee on Social Security, Representative Sam Johnson (R-3rd-TX), was next to offer his opening statement. Ranking Member Johnson stated that reducing disability claims backlogs is critically important and today’s hearing will provide the opportunity to assess the progress that the Social Security Administration is making, most especially after receiving an additional \$500 million in stimulus (ARRA) funding to address the backlogs.

Ranking Member Johnson added that while the backlogs are a serious problem, the reality is that the Disability Insurance program faces an even more serious problem that is just as deserving of our attention. Congressman Johnson stated that according to the Congressional Budget Office (CBO), fully promised disability benefits cannot be paid beginning in just eight years.

Ranking Member of the House Ways and Means Subcommittee on Income Security and Family Support, Representative John Linder (R-7th-GA) was the next to speak. Ranking Member Linder stated that compared with the funding level in 2008, the past two years have seen an additional \$3.5 billion spent on SSA’s administrative costs, an increase of over 35 percent. Ranking Member Linder added that a significant share of the new spending was for the processing of new claims for benefits, driven both by the recession and the aging of the baby boomers. Still, he

added, there are a staggering 1.7 million Americans waiting in line to join the disability rolls. He stressed that this is a big problem, and one we should continue to work on fixing.

Following the opening statements from Chairman McDermott, Ranking Member Johnson, and Ranking Member Linder, the Chairman of the House Ways and Means Subcommittee on Social Security, Representative Earl Pomeroy (D-At Large-ND) expressed concerns he has with certain trends, such as the number of claims being filed, average processing times, and pending claims. Congressman Pomeroy outlined these concerns by referencing four charts.

To view the charts that Chairman Pomeroy displayed and discussed during this portion of the hearing please use the following links:

Pending Initial Claims are Rising Dramatically:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Initial_Pending_Chart.pdf

Pending Disability Claims:

http://waysandmeans.house.gov/media/pdf/111/2010Apr27_Pending_Claims.pdf

Average Processing Time for Social Security Disability Claims:

http://waysandmeans.house.gov/media/pdf/111/DisabilityClaim_ProcessingTime.pdf

Social Security Disability Claims Pending:

http://waysandmeans.house.gov/media/pdf/111/DisabilityClaim_Pending.pdf

Following Chairman Pomeroy, the first panel began as Representative Bob Filner (D-51st-CA) presented his opening statement. Representative Filner spoke regarding his concerns related to the DDSs in California. He addressed both the role of DDSs and the impact the furloughs are having on DDSs in California.

He added that DDSs play a significant role in addressing the disability backlog crisis; one that he believes has not been examined thoroughly enough. Representative Filner added that the furloughs in California are placing added stress on the DDS employees, causing them to cut corners to try and keep up with the massive workload. One example is that now DDS employees do not have as much time to assist individuals with the forms. This in turn has caused many forms to be filled out incorrectly, or not at all. This has resulted in the denial of many claims that would normally be accepted at the initial level.

Representative Filner indicated that DDS employees in California are furloughed 3 days out of every month, or 15 percent, and rather than saving money for the state these furloughs may actually be costing the state money. He added that there are currently over 40,000 cases sitting on the shelves of the California DDSs, and that number is growing by 1,000 a week. He also stated that the workloads have become so overwhelming that many times the DDSs don't have enough employees to take cases, so cases are being assigned to phantom staff (a more detailed description of "phantom staff" is included later in this report), just so they can be assigned to someone.

Representative Filner ended by stating that he is proposing legislation to federalize DDSs if a state can't do its function. The proposed language of the bill would state that furloughing would be an indication that the state is not performing its function.

Following Representative Filner's opening statement Chairman Pomeroy responded that the furloughing of DDS staff in California is an "irrational act." He echoed Representative Filner's observations that the furloughs do not save the state money rather they cost the state money.

Representative Filner added that there is a currently a lawsuit against Governor Schwarzenegger related to the furloughing of DDS employees. As it currently stands, the Governor is in the process of appealing the initial ruling. The furloughs are expected to continue until the June deadline, after which there have been discussion of pay cuts down to minimum wage.

Chairman McDermott was next to offer questions and asked Representative Filner to further elaborate on "phantom staff." Representative Filner stated that he has talked to numerous DDS employees that would be willing to testify that because of the overwhelming workloads, cases are being assigned to staff that do not exist. Mr. Filner referred back to his opening statement, stating that this is largely a result of the employees being overwhelmed and as a result needing to cut corners to handle the workloads.

Following Representative Filner, Commissioner Astrue of the Social Security Administration presented his oral remarks.

The Commissioner began by stating that the best way to streamline the process is to make the right decision as soon as possible. Commissioner Astrue added that to do this SSA has introduced new technology and updated program rules. He indicated that because of user-friendly programs, online applications have increased by about 130 percent in just two years.

The Commissioner added that expanded quick disability determinations and compassionate allowances, the building of a common place disability processing system, and the fact that disability notices now direct individuals to a Health and Human Services (HHS) website that provides resources, will all help deal with the ever increasing disability workloads.

He added that for the first time since 2005 SSA has reduced the pending hearings to fewer than 700,000, driving the number down by 10 percent in the last year. The Commissioner also stated that over the last three years SSA has made a push to clear all cases that are 825 days or older. It is anticipated that this effort will result in all of these cases being cleared by the end of this year.

Commissioner Astrue added that recently the Government Accountability Office (GAO) determined that SSA's strategies are working in eliminating the hearings backlog and that there is a 78 percent chance the backlogs will be eliminated by 2013.

He also stated that SSA is considering reinstating the reconsideration step in Michigan to try and provide individuals with quicker benefits. Michigan currently has one of the highest disability caseloads, in which a higher than average number of the cases are overturned at the hearing level.

Commissioner Astrue stated that SSA is updating the agency's strategic plan. He said, "We started up the process again to match anticipated workloads against our current capacity to figure out what we need to do differently. The new report should be ready in the January/February 2011 timeframe."

The hearing then proceeded to the question and answer (Q&A) portion of panel two. The Q&A section began with Ranking Member Sam Johnson asking the Commissioner about under producing Administrative Law Judges (ALJs) and what flexibility the Commissioner has in dealing with such judges. The Commissioner replied (much like he has in the past regarding this issue) that his hands are tied. The issue of judicial independence makes it very difficult for the Commissioner to do much unless the judge is either being disciplined because of conduct or not following agency policies. The Commissioner suggested to the Members of the Subcommittees that the best way to handle an under performing ALJ is to simply have a Member of Congress talk to the judge directly.

Another exchange of note in this portion of the hearing was between Representative John Lewis (D-5th-GA) and Commissioner Astrue. Representative Lewis made it clear that he feels there is a desperate need to reduce disability determination times in the Atlanta area, as that area of the country has been one of the worst relative to the number of days it takes to receive a hearing. Representative Lewis added that Atlanta and Atlanta North are both well over 400 days, and that is simply not acceptable.

Commissioner Astrue replied that the addition of staff and new offices in Covington and Augusta, Georgia should help to absorb some of the Atlanta workloads and help to bring those disability hearing times down to around 300 days.

Another exchange of note was the Q&A between Commissioner Astrue and Representative Sander Levin (D-12th-MI), who is the acting Chairman of the Ways and Means Committee. Representative Levin expressed his strong disgust for the long wait times that many are experiencing before receiving a hearing. He added that some people are even passing away before they are able to receive a disability hearing. Representative Levin expressed concern over the long wait times in Michigan, where in some cases individuals are waiting well over 600 days to receive a disability hearing. He also was very worried and frustrated with the Commissioner over the possibility that the reconsideration step may be reimplemented in Michigan. The idea of reinstating the reconsideration step was raised by several Members of Congress throughout this hearing, and they all expressed concern. It seems that most Members of Congress believe that adding this step would only cause individuals to have to wait even longer for benefits.

Commissioner Astrue expressed a different opinion regarding reinstating the reconsideration step and indicated that SSA believes that it will help individuals receive their benefits quicker. Representative Levin asked the Commissioner what percentage of the individuals that are initially denied then go on to be approved at the reconsideration phase. Commissioner Astrue answered that 15 percent go on to be approved at the reconsideration step, and that the other 85 percent must then appeal to go to the next step which is a hearing.

Representative Levin responded that he feels reconsideration will only cause individuals to have to wait even longer to receive a hearing, adding that this step would add an additional 90 to 100 days for most.

Following the exchange between Commissioner Astrue and Representative Levin, Subcommittee on Social Security Chairman Pomeroy also weighed in on the issue. He indicated that the Subcommittee has very little data to prove one way or the other if reconsideration would be beneficial. Chairman Pomeroy added that it is very concerning that SSA is moving ahead with reconsideration plans in certain states but has not raised this issue with the Subcommittee on Social Security. The Chairman added that he knows the idea of adding the reconsideration phase has been under evaluation for a while, but not once during that process was the Subcommittee involved. The Commissioner responded to Chairman Pomeroy by indicating that the agency would provide information to the Subcommittee. He did not address why this has not been done to date. The Commissioner also indicated that SSA believes that reconsideration will allow for ALJs to have a little more breathing room, as it will slightly lessen the number of appeals, and as a result will allow judges to start to address the disability backlogs.

Chairman Pomeroy and Representative Levin were not the only Members who voiced concerns regarding reinstating the reconsideration phase. Representative Becerra (D-31st-CA) as well as Representative Sanchez (D-39th-CA) also raised the issue with the Commissioner during their question and answer times. Both Representatives seemed to be worried about how it would further slow down the process for many individuals in receiving a hearing. Representative Becerra asked how much it would cost SSA to reinstate the reconsideration phase in Michigan. The Commissioner stated it would be about \$20 million. Representative Becerra then asked Commissioner Astrue (more of a statement rather than an actual question for the Commissioner to answer) how many people SSA could hire for \$20 million.

Another interesting portion of the Q&A section was when the Commissioner discussed how hearing offices across the country over the last 18 years have not kept up with the country's demographic shift. He explained that as people moved around the country, and certain regions grew and others shrunk, resources were not distributed around the country as they should have been. He added that this played a role in where we are at today.

The Q&A section of the hearing with Commissioner Astrue came to a close with the discussion circling back to the issue of furloughs. Commissioner Astrue closed by stressing that he believes there is a solution that lies somewhere between the federalizing of the DDSs and the status quo.

The third panel began with an opening statement from Dan Bertoni, Director for Disability Issues Education, Workforce & Income Security Team, at the U.S. Government Accountability Office (GAO). Mr. Bertoni discussed the ongoing efforts of SSA to address the disability backlogs. He drew mostly from GAO's September 2009 report assessing SSA's plan for eliminating the disability hearings backlog by 2013, as well as SSA's most recent performance reports and budget documents.

Mr. Bertoni indicated that GAO believes that SSA's plan should reduce the disability backlogs, but that all of the agency's goals related to productivity would have to be met to eliminate the

backlog by 2013. Mr. Bertoni added that GAO cautions that SSA's plan to rapidly increase productivity could drastically decrease quality of some workloads and decisions.

Next to testify was Inspector General O'Carroll of the Social Security Administration. Mr. O'Carroll presented some of OIG's most recent findings. He discussed OIG's findings on judge-to-staff ratio. In a recent audit the OIG found that an appropriate ratio is critical. Without the appropriate number of staff, cases can not be prepared in a manner that would allow the judge to work at capacity. As SSA has hired additional staff for judges, Mr. O'Carroll added that these hires have not been distributed evenly throughout the country. He indicated that 33 percent of the hearing offices still do not have the staff that they need.

He also addressed the reinstatement of reconsideration in a number of states, such as Michigan and possibly Colorado. Mr. O'Carroll added that reconsideration is an issue of concern. In 1999, SSA piloted the elimination of reconsideration in 10 states. Mr. O'Carroll added that now SSA believes that by reinstating this step, in places like Michigan, the agency will get benefits to individuals quicker. He stated, that in general OIG found that by reinstating the reconsideration step some individuals will get an allowance decision sooner, however it will only further delay the decision for a larger number.

Next to speak was Nancy Shor, Executive Director of the National Organization of Social Security Claimants' Representatives, on behalf of the Consortium for Citizens with Disabilities Social Task Force. Ms. Shor addressed the recent surge in initial disability claims due to the economic downturn, as well as recognizing and acknowledging the slow but steady progress at key areas of the hearing level due to increased resources and hard working ALJs.

She indicated that she is very concerned with trends at the DDS level where they are seeing increased processing times and number of pending cases. Perhaps the issue of most concern for Ms. Shor was reimplementation of the reconsideration phase. She spent considerable time expressing concern about the effect reinstating reconsideration may have on states such as Michigan. She noted that many in Michigan believe that reconsideration will only further slow down the process for many individuals. She also indicated that reconsideration reversals are generally very low and are viewed as a rubber stamp level that must be endured before the claimant can move along to the ALJ hearing level.

She went on to add that the President's FY 2011 budget request would reinstate the reconsideration phase in ten prototype states. In these ten states for the past ten years where the reconsideration had been eliminated, claimants' representatives reported that the process has been working well.

Next to testify was Randall Frye, Administrative Law Judge, Kings Mountain, North Carolina on behalf of the Association of Administrative Law Judges. Judge Frye thanked the Subcommittee Members for the resources that they have helped to secure, which has led to the recent hiring of Administrative Law Judges and staff. He also cautioned Members of the Subcommittee that with the current backlogs and the pending cases on the horizon this is going to be a problem we will face well past 2013.

Judge Frye went on to speak about the reconsideration step, adding that with the addition of the reconsideration phase the SSA process is four steps. He noted that he knows of no other regulatory agency that has a four-step process. Judge Frye also went on to add that the reconsideration step, and the four-step process, do not serve the American public, and that it should be abolished.

The final witness was Eddie Willrich, Deputy Sheriff, Harris County Sheriff's Office. Mr. Willrich utilized his time to stress the importance of program integrity projects and workloads. He stated that his Houston, Texas Cooperative Disability Investigation Unit has been very successful in preventing abuse in SSA's disability program and preventing payment fraud.

Mr. Willrich added that the Cooperative Disability Investigation Units were established in 1999 to pool resources to help prevent SSA disability program fraud. He stated that there are currently 21 units in 19 states. Mr. Willrich indicated that since this program began it has saved the disability program an estimated \$2.5 billion.

Following Mr. Willrich's testimony, Subcommittee Members were called to the House floor for a series of three votes, as a result the hearing was in recess for about 25 minutes until Subcommittee Members were able to return.

Following the votes Chairman Pomeroy was the only Member that was able to return for the question and answer portion with the third panel. Chairman Pomeroy began by discussing SSA's performance goals and measures. He referred back to testimony given by witnesses during the April 15, 2010 hearing before the Social Security Subcommittee that examined Social Security Administration Field Office service delivery. In an exchange between Chairman Pomeroy and Dan Bertoni from GAO there seemed to be agreement that SSA's performance plan, which consists of 38 separate initiatives, is too "loose" in structure with none of the initiatives really being tied together. Dan Bertoni also added, with Chairman Pomeroy agreeing, that at the end of the day SSA simply did not put forward the extra metrics to tie all the objectives together. This in turn would have helped to provide transparency in how the agency planned on achieving its primary objectives.

Chairman Pomeroy then revisited the issue of reimplementation of the reconsideration phase. He asked both Mr. Bertoni and Mr. O'Carroll if there is enough data to collect from the pilot to perform a side-by-side evaluation of the data without the reconsideration phase to see if reconsideration does actually provide a benefit. Mr. O'Carroll added that there really is not enough data available from the pilot. Nancy Shor added that it is her understanding that any state that has had the reconsideration step has expressed the fact that they want to get rid of it.

In closing, it is clear that Chairman Pomeroy was not pleased by the fact that it appears that SSA has not communicated with the Subcommittee on Social Security regarding reinstating the reconsideration phase. Chairman Pomeroy stated that he knows nothing about SSA's plans to bring back the reconsideration step in states that don't have it now. He also said he had not seen any data to support this move. Additionally, it was also clear that Members of Congress are concerned not just about the backlog of the individuals waiting for a hearing but also with

increased number of initial claims that are coming in. With the economic downturn as well as the aging of the baby boomers these numbers are anticipated to increase very sharply.

With concerns expressed regarding both the reconsideration phase as well as the increase in initial claims and waiting times we fully expect the Subcommittee on Social Security as well as the Subcommittee on Income Security and Family Support to convene additional hearings to further examine these issues. We will continue to keep you updated.

Greystone Group LLC
418 C Street, NE
Washington, DC 20002
202-547-8530/FAX 202-547-8532
Contact: Rachel Emmons or Aaron Hunter
E-mail: rachele@greystone-group.com or aaronh@greystone-group.com