

**The National Council of Social Security Management Associations, Inc.**  
**GREYSTONE GROUP WASHINGTON REPORT**  
**Legislative Report 2-2012**  
**March 23, 2012**

**Overview**

On Tuesday, March 20, 2012, the U.S. House Committee on Ways and Means Subcommittee on Social Security held the third in a series of hearings on, "Securing the Future of the Social Security Disability Insurance (SSDI) Program." The hearing focused on how disability insurance eligibility decisions are made, including the definition of disability and the Federal-State relationship.

Six witnesses were asked to testify on two panels. The written testimony of each of the witnesses can be viewed by holding down the "control key" and clicking on the respective links below:

**Panel 1**

The Honorable Michael J. Astrue, Commissioner, Social Security Administration  
[http://waysandmeans.house.gov/UploadedFiles/Embargoed\\_Astrue\\_Testimony.pdf](http://waysandmeans.house.gov/UploadedFiles/Embargoed_Astrue_Testimony.pdf)

**Panel 2**

Trudy Lyon-Hart, Director of Disability Determination Services, Vermont Agency of Human Services, on behalf of the National Council of Disability Determination Directors  
[http://waysandmeans.house.gov/UploadedFiles/Embargoed\\_Lyon-Hart\\_Testimony.pdf](http://waysandmeans.house.gov/UploadedFiles/Embargoed_Lyon-Hart_Testimony.pdf)

Lisa D. Ekman, Senior Policy Advisor, Health & Disability Advocates on behalf of the Consortium for Citizens with Disabilities Social Security Task Force  
[http://waysandmeans.house.gov/UploadedFiles/Ekman\\_Testimony.pdf](http://waysandmeans.house.gov/UploadedFiles/Ekman_Testimony.pdf)

Dan Bertoni, Director, Education, Workforce, and Income Security Issues, U.S. Government Accountability Office  
[http://waysandmeans.house.gov/UploadedFiles/Embargoed\\_Bertoni\\_Testimony.pdf](http://waysandmeans.house.gov/UploadedFiles/Embargoed_Bertoni_Testimony.pdf)

Leighton Chan, M.D., Chief, Rehabilitation Medicine Department, National Institutes of Health  
[http://waysandmeans.house.gov/UploadedFiles/Embargoed\\_Chan\\_testimony.pdf](http://waysandmeans.house.gov/UploadedFiles/Embargoed_Chan_testimony.pdf)

Nicole Maestas, Ph.D., Senior Economist, RAND Corporation  
[http://waysandmeans.house.gov/UploadedFiles/Nicole\\_Maestas\\_Test\\_new.pdf](http://waysandmeans.house.gov/UploadedFiles/Nicole_Maestas_Test_new.pdf)

**The following Members of Congress attended the hearing:**

**Chairman Sam Johnson (R-3<sup>rd</sup>-TX)**

Representative Kevin Brady (R-8<sup>th</sup>-TX)

Representative Pat Tiberi (R-12<sup>th</sup>-OH)

Representative Rick Berg (R-At Large-ND)

Representative Adrian Smith (R-3<sup>rd</sup>-NE)

Representative Kenny Marchant (R-24<sup>th</sup>-TX)

**Ranking Member Xavier Becerra (D-31<sup>st</sup>-CA)**

### **Hearing Background Provided by the Subcommittee**

The disability insurance program pays benefits to those who have worked in the past but are determined unable to work because of a disability that is expected to last more than a year or result in death. The responsibility to make the initial finding on disability was assigned to the State Vocational Rehabilitation Agencies or other appropriate State agencies in the Social Security Act Amendments of 1954. All 50 states, plus the District of Columbia and Puerto Rico, maintain fully federally-funded agencies, collectively referred to as Disability Determination Services (DDSs), which decide initial and continuing eligibility of disability claims. The DDS examiner does not see claimants face-to-face and must rely on relevant medical evidence that is provided by the claimant and/or medical sources in deciding whether the individual is disabled, as defined by Federal regulation and Social Security Administration (SSA) policies.

In FY 2011, the DDSs received over 3.3 million initial disability claims, the highest in SSA's history. Examiners completed nearly 3.4 million initial claims, reducing the backlog of pending applications to 759,000, nearly 300,000 fewer claims than were pending at the end of FY 2010. The average processing time for initial disability claims was 109 days in FY 2011 and is projected to rise slightly in FY 2012. Over the most recent five-year period for which data is available, the percentage of all applications for disability benefits that were allowed ranged from 36-38 percent.

The Social Security Act considers people eligible for benefits when they are unable "to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." The disability has to be so severe as to prevent them from doing any "substantial gainful work which exists in the national economy," whether a specific job is available or not. The disability must result from a physical or psychological condition that is "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." In 2012, the level of earnings that constitutes performing SGA is \$1,010 per month for non-blind individuals and \$1,690 for blind individuals.

Most disability claims are evaluated under a five-step sequential evaluation process. The first two steps screen out individuals who are currently working above the SGA threshold and applicants whose impairments are not severe. The third step compares the individual's condition to the "medical listings" – a regulatory list of conditions that are considered severe enough to prevent a person from doing any gainful activity. If the individual's condition does not meet or equal the severity of a condition in the medical listings, the examiner proceeds to step four, which is assessing the individual's residual functional capacity (what an individual can do despite his or her impairment - including past relevant work). If the individual is found able to perform past relevant work, the claim is denied. If not, the examiner must determine at step five whether the individual can undertake other work. State examiners rely on medical evidence obtained from the claimant's health care providers, and can also consult with medical experts and may purchase one or more consultative examinations.

SSA also has several fast-track procedures for evaluating claims from individuals with a terminal illness, or who have certain especially severe conditions that are highly likely to be allowed (called Compassionate Allowances and Quick Disability Determinations).

In announcing the hearing, Social Security Subcommittee Chairman Sam Johnson (R-TX-3<sup>rd</sup>) said, **"Americans with disabilities deserve to get the right decision as early as possible, but that's just not how it currently works. States struggle on the front lines to make sense of the program's complex rules to decide who gets benefits. At the same time advances in treatment, rehabilitation, and the workplace have created new opportunities for those with disabilities to return to work. Securing the future of the disability insurance program should address these challenges and opportunities while keeping the process fair for both claimants and taxpayers."**

### **Opening Statements**

The opening statements of Chairman Johnson and Ranking Member Becerra can be accessed by holding down the "control key" and clicking on the respective links below:

#### **Subcommittee on Social Security Chairman Sam Johnson (R-3<sup>rd</sup>-TX)**

<http://waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=285594>

#### **Subcommittee on Social Security Ranking Member Xavier Becerra (D-31<sup>st</sup>-CA)**

<http://democrats.waysandmeans.house.gov/press/PRArticle.aspx?NewsID=12071>

### **Panel 1 - Opening Statement**

Following opening statements from Chairman Johnson and Ranking Member Becerra, SSA Commissioner Michael Astrue, the only individual on the first panel, presented his oral remarks. Of note, over the past five years SSA has improved service, relative to disability claims, despite limited resources, and a huge influx of disability claims, stated Commissioner Astrue. For SSA to succeed, Astrue added, we need experienced employees, up-to-date technology, and streamlined policy. We have made, and will continue to make, useful technological advancements, but "technology alone can not make disability determinations, the complexity of the disability programs require skilled employees," Commissioner Astrue stated.

"Unfortunately after two straight years of receiving less funding than we did in 2010, SSA will have lost 7,000 experienced employees that we can't afford to replace," added Commissioner Astrue. He also noted that rather than focusing on projects that SSA cannot fund, the agency has tried to focus on program simplifications such as the Work Incentives Simplification Pilot (WISP).

Commissioner Astrue also indicated in his oral testimony that prior to 2009 SSA received approximately 2.6 million initial disability claims each year. Since 2009 that level has increased dramatically to last year's nearly 3.3 million disability claims. Social Security remains a sound investment, stated Commissioner Astrue. In FY 2011 SSA drastically cut the wait time for a disability hearing to under a year, which was the first time it had been that low since 2003. Wait times are also down in both the Field Offices and SSA's 800 number, noted Commissioner Astrue. He also noted that SSA has increased employee productivity by about 4% in each of the last five years – few if any organizations either public or private have been able to achieve this.

In closing, Commissioner Astrue stated that well trained employees, on the frontlines, are crucial and SSA simply cannot continue to lose so many employees, and keep up with workloads.

## **Panel 1 - Question and Answer**

Following Commissioner Astrue's opening statement members of the Subcommittee then began the first question and answer portion of the hearing. Of note in the Q&A portion was a question raised by Chairman Johnson, about why some of the medical listings, as noted in the Government Accountability Office's testimony (GAO), have been extended 19 to 33 years. Chairman Johnson was clearly perplexed about why updating these listings is taking so long. Commissioner Astrue responded that it should not take this long to update the listings, and that early on in his tenure, he made it a priority to reduce the time needed to update such listings. Currently, SSA has changed this to where the agency is close to updating the medical regulations on a five-year cycle, noted Commissioner Astrue.

Additionally of note in this Q&A portion of the hearing was a question from Ranking Member Becerra (D-31<sup>st</sup>-CA). Becerra asked, "While your caseloads are rising, and you are losing valuable and experienced personnel, your budgets are shrinking – how does that affect your ability to keep up?" Commissioner Astrue responded, stating that to this point SSA has done a remarkable job of keeping up, mainly due to simplification and great work by the employees, but that it will be tough to keep this up indefinitely. Further, Commissioner Astrue stressed that SSA is probably four to six months away from moving significantly backwards in most of its major service metrics. Even if SSA continues the four percent productivity increase, it will not compensate for all the people we are losing, noted Commissioner Astrue. As a follow up to this line of questioning, Ranking Member Becerra added that many in Washington (DC), when it comes to Social Security, are being "penny wise, and pound foolish, when it comes to many services that individuals have paid for."

Following the exchange between Ranking Member Becerra and Commissioner Astrue, Chairman Johnson noted that he wanted to set the record straight in regard to SSA funding. Overall, the Chairman stated, SSA received an increase in its budget despite the 1.5% decrease in the overall discretionary cap. Further, this year's (FY 2012) appropriations bills were supported by both Republicans and Democrats alike, and the President's FY 2013 SSA Budget request was \$753 million below the Commissioner's request of \$12.5 billion. But, the fact is, added Chairman Johnson, this country is swimming in a sea of red ink, and we need to get our fiscal house in order and live within our means. Commissioner Astrue responded that he clearly understands the fiscal needs, but wants to be clear that SSA's appropriation has been smaller two years in a row. Ranking Member Becerra followed up this line of discussion by adding that Congress forced SSA to use its reserves to try and continue to perform at a high level. Those reserves, stated Becerra, were meant to be used for any number of activities that SSA had to perform. At this point, Commissioner Astrue clarified that because most of the reserve funds were rescinded; SSA only used some of those funds. Ranking Member Becerra noted that not only has SSA received less money for its budget, but money has also been taken away – which SSA would have otherwise used for good purposes. Ranking Member Becerra directly addressed Chairman Johnson, "Mr. Chairman let's be clear, we can try to paint this however we wish, but we should do hearings on this particular issue, because Americans have paid for this service."

Additionally of note, Representative Adrian Smith (R-3<sup>rd</sup>-NE) asked Commissioner Astrue to discuss what safeguards are in place to prevent "gaming of the system" when cases are "fast-tracked." Commissioner Astrue responded that no disability considerations happen without a full medical review and in most cases an occupational review, clarifying that Quick Disability Determinations (QDD) are simply put up at the top of the queue. Another important aspect is that at a managerial level SSA has

set the threshold for acceptable QDD cases at 95 percent or more probability of allowance, stated Commissioner Astrue. There has been occasional internal and external pressure to lower that, but the agency has remained disciplined in allowing only the most likely cases, as it is important in helping to maintain the integrity of the system, noted the Commissioner.

Representative Smith also asked Commissioner Astrue to discuss what the President's FY 2013 Budget request will do to disability hearing wait times – will they continue to decrease as the FY 2013 request seems to indicate? Commissioner Astrue responded that it will be contingent on SSA receiving adequate funding from Congress, and if the Office of Personnel Management (OPM) provides an adequate supply of judges. Commissioner Astrue noted that at some point as the budget gets tighter, SSA is going to have to make tough choices related to whether the agency backs off or not in trying to reach the 270 day goal that has been set.

### **Panel 2 – Opening Statements**

Following the question and answer with Commissioner Astrue, the second panel presented their oral statements. The first to present was Trudy Lyon-Hart, Director, Office of Disability Determination Services (DDS), Vermont Agency of Human Services, on behalf of the National Council of Disability Determination Directors. Ms. Lyon-Hart began her statement, noting that collectively they (Disability Determination Service Directors) direct the work of 14,000 employees, who process 4.8 million disability claims each year. In any given year, around 70 percent of the disability allowances are made at the DDS level, with no need for an Administrative Law Judge (ALJ) hearing, stated Ms. Lyon-Hart. Social Security and the DDSs have worked well together to provide prompt and efficient service to those who need it, but our ability to continue to provide this service is increasingly threatened, noted Ms. Lyon-Hart. Funding for FY 2012 will not cover all the cases that the DDSs will receive, and the deeper cuts scheduled to take place in FY 2013, will dramatically worsen the situation.

Ms. Lyon-Hart added that since SSA imposed a hiring freeze, the DDSs have lost over 2,000 employees, three-quarters of who are examiners, which results in a lost capacity of over 900,000 cases per year. Since passage of SSA's FY 2012 administrative funding, DDSs have received around 200 hires, and while these hires are appreciated, they are nothing more than a drop in the bucket. With insufficient funding to handle the incoming cases, continued attrition, and minimal replacement hiring, the DDSs will reach a tipping point with burgeoning backlogs and case delays. There are some policy items that could help though, such as simplification, expansion of the medical listings, and the extension of single decision maker authority, stated Ms. Lyon-Hart. In closing, Lyon-Hart indicated that "the foundation of an effective and efficient DDS is adequate funding and a highly trained staff."

Next to present an opening statement was Lisa D. Ekman, Senior Policy Advisor, Health & Disability Advocates on behalf of the Consortium for Citizens with Disabilities Social Security Task Force. In her remarks, Ms. Ekman mentioned that SSDI is a lifeline for many individuals. Given this importance, she added, providing SSA with an adequate budget is essential for the timely and accurate processing of initial disability claims. She indicated that the Consortium for Citizens with Disabilities Social Security Task Force was pleased to see the progress SSA made in FY 2008 through FY 2010 in reducing the time it took for individuals with disabilities to receive their determinations. She contrasted this with the observation that it is unfortunate that with no increase in SSA's funding, over the last two fiscal years, waiting times and delays in processing claims will likely again increase.

Following Lisa Ekman, Dan Bertoni, Director, Education, Workforce and Income Security Issues, U.S. Government Accountability Office presented his remarks. Mr. Bertoni discussed GAO's preliminary findings related to SSA's efforts to modernize its disability program. Last year SSA paid nearly \$170 billion to 12 million beneficiaries and dependents, Mr. Bertoni noted. In 2003, GAO designated SSA's disability program as high risk, in part because of the criteria used to designate individuals disabled, and because its occupational information did not reflect changes in the job market. Recently though, SSA has made updates to its medical listing system, by adopting a two-tier system, noted Mr. Bertoni. Additionally, SSA has initiated its own occupational system called the Occupational Information System (OIS) that will replace the current outdated system that is being used. The system will be completed in 2016 and will cost \$108 million. In closing, GAO will continue to monitor any and all progress SSA is making on these fronts, stated Mr. Bertoni.

Next, Dr. Leighton Chan, Chief, Rehabilitation Medicine Department, National Institutes of Health (NIH) presented his statement. Dr. Chan utilized his time to discuss the collaboration between NIH and SSA in creating new assessment methods to be used in SSA's disability process. Of note, Dr. Chan stated, one of the key aspects of this collaboration is the joint effort to create a rapid, reliable, functional assessment tool that SSA can one day use in real time. In closing, Item Response Theory – Computerized Adaptive Testing (IRT-CAT) is being looked at for use both by the claimant and the clinician, to help reach a more accurate functional assessment, Dr. Chan noted.

Last to provide a statement was Dr. Nicole Maestas, Senior Economist, RAND Corporation. Dr. Maestas used her time to address consistency in the initial disability determination process. She noted that given the fact that the process of determining disabilities is very complex, and constantly changing, some amount of variation in the initial stage is expected. It is important to try to minimize this variation as much as possible though, stated Dr. Maestas. In RAND's research findings, the level of variation, even within the same disability determination office speaks to the fact that the approval of initial disability claims does depend largely on who is processing the claim. This in turn reflects itself in the variation of acceptance rates outside the average range – in some cases with rates being either 12 percent above or below the office's average acceptance rate. Dr. Maestas reiterated that these "outliers" must be minimized. When it comes to the appeals process, nearly 66 percent of the denied initial claims are appealed, and 75 percent of those are overturned, she stated. In closing, Dr. Maestas noted that the longer it takes an individual to get a final disability determination, the more difficult it is to eventually reemploy the individual. Thus, anything that can speed up the system, i.e. minimizing wild swings in acceptance rates, would be very beneficial for everyone involved.

## **Panel 2 – Question and Answer**

Following the oral statements by the witnesses the question and answer session between members of the Subcommittee and the witnesses began. The following details a key exchange during this session.

Given the fact that SSA is having to do so much with less and less resources, Ranking Member Becerra asked Ms. Lyon-Hart what they are seeing. Are they losing folks with lots of experience, or little experience? Ms. Lyon-Hart responded that the DDSs are losing a mix of both, but as the baby boomers are getting older and more disabled, they are also leaving the offices at a greater rate. Becerra followed up on this response, stating that he is worried that the reduction in disability wait time and

backlogs will be reversed, given the dwindling resource levels. SSA has already had to make some very tough choices such as eliminating a few offices and closing office doors 30 minutes earlier, noted Becerra. Becerra next asked, "Will it become obvious to the average American that there is a problem with Social Security, because its budget is being so shortchanged?" Ms. Lyon-Hart responded that she does think it will become obvious, if it is not already.

If you are interested in watching the video of the Subcommittee hearing, you can access the archived webcast by holding down the "control" key and clicking on the link below:

[http://waysandmeans.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=195](http://waysandmeans.granicus.com/MediaPlayer.php?view_id=2&clip_id=195)

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