

Statement of The Honorable Jo Anne B. Barnhart
Senate Committee on Governmental Affairs
"The Road to Recovery: Solving the Social Security Disability Backlog"
March, 29 2004

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to come to Cleveland this morning to describe my approach for improving the process for determining the eligibility of people who apply for Social Security (SSDI) and Supplemental Security Income (SSI) disability benefits, as well as some initiatives we have undertaken to improve service provided by the local Cleveland Office of Hearings and Appeals.

As a member of the Social Security Advisory Board, before becoming Commissioner in November 2001, I was well aware that the administration of our disability programs represented one of the biggest challenges facing SSA. These essential and complex programs are critically important in the lives of almost 13 million Americans. Claimants and their families expect and deserve fair, accurate, consistent, and timely decisions.

Service Delivery Assessment

Early in my tenure I began a comprehensive Service Delivery Assessment to thoroughly examine all of SSA's workloads. We began that assessment with the disability claims process and mapped out each step from the initial claim through a final administrative appeal. Our analysis of the process showed that the length of time required to move through the entire appeals process was 1153 days -- 525 days due to backlogged cases and 628 days to move through the process.

Based on that analysis, I developed a Service Delivery Plan which now forms the basis of our annual budget submission. This year, the President's budget includes \$8.878 billion for the Limitation on Administrative Expenses (LAE), a 6.8 percent increase over our FY 2004 appropriation. Given the very tight fiscal environment for FY 2005, we believe this increase in funding reflects the President's confidence in the Agency, its management, and the results we produce for the American people.

Short-term Strategies

While eliminating disability backlogs, such as we find in Cleveland, is essential to improving processing times, we recognized that improving workload management and the process itself were also required to achieve our goal of providing timely and accurate service. To tackle the management and process issues, we developed both a short-term and long-term strategy.

The short-term strategy is focused on identifying areas where immediate action was possible, while the long-term strategy would focus on improving the overall disability

determination process. Over the past two years, we have implemented a number of short-term initiatives. These include:

The participation of Administrative Law Judges (ALJs) in early screening for on-the-record decisions;
developing a short form for fully favorable decisions;
creating a law clerk (attorney intern) position;
deploying speech recognition technology to hearing offices;
ending the practice of rotating hearing office technicians among different positions;
using scanning technology to track and retrieve folders;
eliminating the tape transcription backlog, and
eliminating delays in presenting cases to the U.S. District Courts.

We are in the process of implementing two other initiatives:

allowing ALJs to issue decisions from the bench immediately after a hearing; and
expanding video teleconference hearings.
And we are preparing to implement an initiative to digitally record hearings.

I am pleased to report that we have achieved some positive results. In FY 2003, we exceeded our Agency-wide productivity goal. SSA offices processed over 2.5 million disability claims—an increase of more than 350,000 from FY 2001. Administrative Law Judge productivity rates were the highest in history—at 2.35 cases per day. SSA's Office of Hearings and Appeals processed 40,000 more hearing decisions than FY 2002. In November 2001, the average time to appeal an unfavorable hearing decision was 467 days. In November 2003, it took 252 days.

We are pleased with our progress, but we know that the improvements have not been uniform around the nation. As you know, the backlogs in Cleveland are especially large, in large part because of a need for additional administrative law judges (ALJs).

To address the unacceptable backlogs here, our Regional Chief Administrative Law Judge, Paul Lillios, and his staff have been in constant contact with the Cleveland hearing office management staff to discuss strategies for reducing processing time and the number of pending cases. Through their hard work, we have a plan that will reduce the time it takes to hear cases and issue a hearing decision, and reduce the backlog of pending cases in the hearing office.

To reach these goals, retired ALJs were re-employed to help the Cleveland office on a part-time basis. And, after several years, a long-running lawsuit that had prevented us from hiring new ALJs has been resolved, and we can now hire ALJs. I am pleased to report that three new ALJs have been selected for the Cleveland office and are scheduled to report for training next month.

In addition, various hearings offices are assisting Cleveland with its workload. This fiscal year we expect to transfer over 5,200 cases. On this point, I want to note that new

video teleconferencing equipment has been installed and is now being used to hear cases. This equipment makes the transfer of cases more efficient and more convenient for claimants in Cleveland.

We have also sent in a team of attorney supervisors to help screen pending disability cases to identify cases that can be favorably decided without a hearing and have had ALJs from other offices travel to Cleveland to conduct hearings.

Furthermore, senior Hearings and Appeals staff, including SSA's Chief Administrative Judge David Washington, visited the Cleveland hearing office several times to meet with management and union representatives.

On-site management audits have recently been conducted and the hearing office has implemented a number of administrative best practices.

We expect these actions to significantly reduce the time it takes to get a hearing decision. And we certainly know how important that it is for the claimants and family members who are waiting for decisions.

But these short-term efforts, important as they are, do not address the fundamental problems. If we are to see long-term results, we must look at the entire process as a whole, and make systemic changes.

Long-Term Strategy

A prerequisite for our long-term strategy is development and implementation of an electronic disability claims system.,

The Accelerated Electronic Disability System (AeDIB) is a major Agency initiative that will move all components involved in disability claims adjudication and review to an electronic business process through the use of an electronic disability folder. These components include the field office, regional office, the program service center, the State Disability Determination Service (DDS), the hearings and appeals office, and the quality assurance staff. When the process is fully implemented, each component will be able to work claims by electronically accessing and retrieving information that is collected, produced and stored as part of the electronic disability folder.

This will reduce delays that result from mailing, locating, and organizing paper folders.

SSA field offices are currently collecting disability information for initial adult and child cases using the Electronic Disability Collect System (EDCS). Also, claimants can now use the Internet to submit disability information which is then propagated into EDCS. I am especially proud to announce that we began national roll-out of AeDIB in January 2004 starting in Jackson, Mississippi, and we have estimated it will be complete by June 2005. In fact, the roll-out is going well and we're right on schedule.

Designing the Approach

In designing my approach to improve the overall disability determination process, I was guided by three questions the President posed during our first meeting to discuss the disability programs.

Why does it take so long to make a disability decision?

Why can't people who are obviously disabled get a decision immediately?

Why would anyone want to go back to work after going through such a long process to receive benefits?

I realized that designing an approach to fully address the central and important issues raised by the President required a focus on two over-arching operational goals: (1) to make the right decision as early in the process as possible; and (2) to foster return to work at all stages of the process. I also decided to focus on improvements that could be effectuated by regulation and to ensure that no SSA employee would be adversely affected by my approach. My reference to SSA employees includes State Disability Determination Service employees and Administrative Law Judges (ALJs).

As I developed my approach for improvement, I met with and talked to many people -- SSA employees and other interested organizations, individually and in small and large groups -- to listen to their concerns about the current process at both the initial and appeals levels and their recommendations for improvement. I became convinced that improvements must be looked at from a system-wide perspective and, to be successful, perspectives from all parts of the system must be considered. I believe an open and collaborative process is critically important to the development of disability process improvements. To that end, members of my staff and I visited our regional offices, field offices, hearing offices, and State Disability Determination Services, and private disability insurers to identify and discuss possible improvements to the current process.

Finally, a number of organizations provided written recommendations for changing the disability process, including a report issued by the Social Security Advisory Board. The report was prepared by outside experts making recommendations for process change. My approach for changing the disability process was developed after a careful review of these discussions and written recommendations. As we continue to move ahead, I look forward to working within the Administration and with Congress, as well as interested organizations and advocacy groups. The team that I created within my own office, reporting to me, to manage the process continues to work with interested parties as we continue to develop a plan. I might note that we also have a page on our website, www.socialsecurity.gov, where the public can make comments,

I would now like to highlight some of the major and recurring recommendations made by these various parties.

The need for additional resources to eliminate the backlog and reduce the lengthy processing time was a common theme, and the President's FY 2005 budget submission, which is currently before Congress, supports these efforts. Another important and often heard concern was the necessity of improving the quality of the administrative record.

DDSs expressed concerns about receiving incomplete applications from the field office; ALJs expressed concerns about the quality of the adjudicated record they receive and emphasized the extensive pre-hearing work required to thoroughly and adequately present the case for their consideration. In addition, the number of remands by the Appeals Council and the Federal Courts make clear the need for fully documenting the administrative hearing record.

Applying policy consistently in terms of: 1) the DDS decision and ALJ decision; 2) variations among state DDSs; and 3) variations among individual ALJs -- was of great concern. Concerns related to the effectiveness of the existing regional quality control reviews and ALJ peer review were also expressed. Staff from the Judicial Conference expressed strong concern that the process assure quality prior to the appeal of cases to the Federal Courts.

ALJs and claimant advocacy and claimant representative organizations strongly recommended retaining the de novo hearing before an ALJ. Department of Justice litigators and the Judicial Conference stressed the importance of timely case retrieval, transcription, and transmission. Early screening and analysis of cases to make expedited decisions for clear cases of disability was emphasized time and again as was the need to remove barriers to returning to work.

My approach for disability process improvement is designed to address these concerns. It incorporates some of the significant features of the current disability process. For example, initial claims for disability will continue to be handled by SSA's field offices. The State Disability Determination Services will continue to adjudicate claims for benefits, and Administrative Law Judges will continue to conduct hearings and issue decisions. However, my approach envisions some significant differences.

The approach proposes a quick decision step at the very earliest stages of the claims process for people who are obviously disabled. Cases will be sorted based on disabling conditions for early identification and expedited action.

Examples of such claimants would be those with ALS, aggressive cancers, and end-stage renal disease. Once a disability claim has been completed at an SSA field office, these Quick Decision claims would be adjudicated in Regional Expert Review Units across the country, without going to a State Disability Determination Service. This approach would have the two-fold benefit of allowing the claimant to receive a decision as soon as possible, and allowing the State DDSs to devote resources to more complex claims.

Centralized medical expertise within the Regional Expert Review Units would be available to disability decision makers at all levels, including the DDSs and the Office of Hearings and Appeals (OHA). These units would be organized around clinical specialties such as musculoskeletal, neurological, cardiac, and psychiatric. Most of these units would be established in SSA's regional offices.

The initial claims not adjudicated through the Quick Decision process would be decided by the DDSs. However, I also propose some changes in the initial claims process that would require changes in the way DDSs are operating. An in-line quality review process managed by the DDSs and a centralized quality control unit would replace the current SSA quality control system. I believe a shift to in-line quality review would provide greater opportunities for identifying problem areas and implementing corrective actions and related training. The Disability Prototype would be terminated and the DDS Reconsideration step would be eliminated. Medical expertise would be provided to the DDSs by the Regional Expert Review units that I described earlier.

State DDS examiners would be required to fully document and explain the basis for their determination. More complete documentation should result in more accurate initial decisions. The increased time required to accomplish this would be supported by redirecting DDS resources freed up by the Quick Decision cases being handled by the expert units, the elimination of the Reconsideration step, and the shift in medical expertise responsibilities to the regional units.

A Reviewing Official (RO) position would be created to evaluate claims at the next stage of the process. If a claimant files a request for review of the DDS determination, the claim would be reviewed by an SSA Reviewing Official. The RO, who would be an attorney, would be authorized to issue an allowance decision or to concur in the DDS denial of the claim. If the claim is not allowed by the RO, the RO will prepare either a Recommended Disposition or a Pre-Hearing Report. A Recommended Disposition would be prepared if the RO believes that the evidence in the record shows that the claimant is ineligible for benefits. It would set forth in detail the reasons the claim should be denied. A Pre-Hearing Report would be prepared if the RO believes that the evidence in the record is insufficient to show that the claimant is eligible for benefits but also fails to show that the claimant is ineligible for benefits. The report would outline the evidence needed to fully support the claim. Disparity in decisions at the DDS level has been a long-standing issue and the SSA Reviewing Official and creation of Regional Expert Medical Units would promote consistency of decisions at an earlier stage in the process.

If requested by a claimant whose claim has been denied by an RO, an ALJ would conduct a completely new, or “de novo” administrative hearing. The record would be closed following the ALJ hearing. If, following the conclusion of the hearing, the ALJ determines that a claim accompanied by a Recommended Disposition should be allowed, the ALJ would describe in detail in the written opinion the basis for rejecting the RO’s Recommended Disallowance. If, following the conclusion of the hearing, the ALJ determines that a claim accompanied by a Pre-Hearing Report should be allowed, the ALJ would describe the evidence gathered during the hearing that responds to the description of the evidence needed to successfully support the claim contained in the Pre-Hearing Report.

Because of the consistent finding that the Appeals Council review adds processing time and generally supports the ALJ decision, the Appeals Council stage of the current process would be eliminated. Quality control for disability claims would be centralized with end-

of-line reviews and ALJ oversight. If an ALJ decision is not reviewed by the centralized quality control staff, the decision of the ALJ will become a final agency action. If the centralized quality control review disagrees with an allowance or disallowance determination made by an ALJ, the claim would be referred to an Oversight Panel for determination of the claim. The Oversight Panel would consist of two Administrative Law Judges and one Administrative Appeals Judge. If the Oversight Panel affirms the ALJ's decision, it becomes the final agency action. If the Panel reverses the ALJ's decision, the oversight Panel decision becomes the final agency action. As is currently the case, claimants would be able to appeal any final agency action to a Federal Court.

At the same time these changes are being implemented to improve the process, we plan to conduct several demonstration projects aimed at helping people with disabilities return to work. These projects would support the President's New Freedom Initiative and provide work incentives and opportunities earlier in the process.

My new approach also incorporates several demonstration projects, which will be voluntary for disability applicants who meet the eligibility requirements for them. These projects will give us an opportunity to try out ways that may help disabled persons earlier in the process.

Early Intervention demonstration projects will provide medical and cash benefits and employment supports to Disability Insurance (DI) applicants who have impairments reasonably presumed to be disabling and elect to pursue work rather than proceeding through the disability determination process.

Temporary Allowance demonstration projects will provide immediate cash and medical benefits for a specified period (12-24 months) to applicants who are highly likely to benefit from aggressive medical care.

Interim Medical Benefits demonstration projects will provide health insurance coverage to certain applicants throughout the disability determination process. Eligible applicants will be those without such insurance whose medical condition is likely to improve with medical treatment or where consistent, treating source evidence will be necessary to enable SSA to make a benefit eligibility determination.

Ongoing Employment Supports to assist beneficiaries to obtain and sustain employment will be tested, including a Benefit Offset demonstration to test to effects of allowing DI beneficiaries to work without total loss of benefits by reducing their monthly benefit \$1 for every \$2 of earnings above a specified level and Ongoing Medical Benefits demonstration to test the effects of providing ongoing health insurance coverage to beneficiaries who wish to work but have no other affordable access to health insurance.

I believe these changes and demonstrations will address the major concerns I highlighted earlier. I also believe they offer a number of important improvements:

People who are obviously disabled will receive quick decisions.

Adjudicative accountability will be reinforced at every step in the process.

Processing time will be reduced by at least 25%.

Decisional consistency and accuracy will be increased.

Barriers for those who can and want to work would be removed.

When I introduced my approach for improving the process, it was the first step of what I believe must be -- and have worked to make -- a collaborative process. I am working within the Administration, with Congress, the State Disability Determination Services and interested organizations and advocacy groups before putting pen to paper to write regulations. As I said earlier, and I say again that to be successful, perspectives from all parts of the system must be considered.

I believe that if we work together, we will create a disability system that responds to the challenge inherent in the President's questions. We will look beyond the status quo to the possibility of what can be. We will achieve our ultimate goal of providing accurate, timely service for the American people.

Conclusion

All of us at Social Security know that the folders on our desks represent people -- people who are often in dire need of help, people who are counting on us for support. I assure you this is a responsibility no SSA employee takes lightly. From teleservice representatives to claims representatives to paralegals to attorneys and judges, we are all committed to providing the kind of service the American people expect and deserve.

Thank you again, Senator Voinovich, for holding this hearing. I look forward to working with you and your colleagues to improve the disability process