

**Statement of
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**Testimony Before the
Subcommittee on Human Resources
of the
House Committee on Ways and Means**

May 20, 2004

Chairman Herger, Ranking Member Cardin, and members of the Subcommittee, thank you for providing this opportunity to present the views of the National Association of Disability Examiners (NADE) on the status of the Supplemental Security Income (SSI) program, anti-fraud and abuse initiatives, and suggestions for additional program improvements.

NADE is a professional association whose mission is to advance the art and science of disability evaluation and to promote ongoing professional development for our members. The majority of our membership is employed in the state Disability Determination Service (DDS) agencies and are directly involved in the adjudication of claims for Social Security and Supplemental Security Income (SSI) disability benefits. However, our membership also includes SSA Field Office and Central Office personnel, attorneys, physicians, and claimant advocates. It is the diversity of our membership, combined with our extensive program knowledge and "hands on" experience which allows us to view problems in the Social Security and SSI disability programs from a broad perspective and to offer solutions which reflect a pragmatic realism.

NADE members, whether in the state DDSs, the SSA Field Office, SSA Headquarters, OHA offices or in the private sector, are deeply concerned about the integrity and efficiency of both the Social Security and the SSI disability programs. Although, in January 2003, the U.S. General Accounting Office (GAO) removed SSI from its list of programs at high-risk for fraud and abuse, it added a new high-risk area encompassing a range of Federal disability programs, including SSI. We would concur with this assessment. While we strongly believe that the vast majority of applicants are not out to defraud the disability program(s), every disability examiner is aware of at least some level of questionable activity on the part of some applicants and/or their representatives. SSI applicants are strong candidates for manipulation by others for financial gain. They are often the victims of others whose mission is to defraud the SSI program. Efforts undertaken by Congress and SSA to combat fraud are cost-effective and provide valuable protection to the victims of those who purposely attempt to defraud the program.

NADE agrees with Commissioner Barnhart that, "SSI beneficiaries are among the most vulnerable members of our society... By any measure, SSI recipients are among the poorest of the poor. For them, SSI is truly the program of last resort and is the safety net that protects them from complete impoverishment". For that reason, we are concerned with the Commissioner's proposal and Congressional initiatives to require pre-effectuation reviews of fifty percent of state agency (DDS) allowances of SSI adult cases, "in order to correct erroneous SSI disability determinations...." ***We question the rationale for increasing the federal quality review rate for the DDSs, a component that allows approximately forty percent of initial claims, with an FY 2002 net accuracy rate of 98.5%, while there is no such corresponding review of decisions made at the Administrative Law Judge (ALJ) level, a component that allows approximately sixty-five percent of claims, with a decisional accuracy rate in FY 2002 of 90%.***

NADE does not believe that increased review of DDS allowance decisions represents an appropriate use of scarce resources. We are not aware of any study that evaluates the end result of claims appealed to the Administrative Law Judge level that were initially allowed by the DDS but later denied after the claim was returned by the federal quality review component. Anecdotal evidence suggests that many of these claims are eventually allowed during the appeals process.

The decision regarding an individual's eligibility for benefits should be objective and unbiased. There is no evidence that increased review of DDS allowances achieves SSA's Strategic Goals. Nor does it support the objective of allowing those claims that should be allowed as early in the process as possible. In fact, by targeting DDS allowances SSA sends a message to the DDSs to deny more claims, forcing claimants to "pursue their claims to the Administrative Law Judge level." This "message" only serves to increase the appeal rate and the overall administrative costs of the program. *In addition, if the review concludes the DDS allowance to be correct, the review process itself delays*

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payment to disabled citizens who are frequently in dire financial straits.

For several reasons the SSI disability program is more labor intensive and difficult to administer than the Title II disability program. Both medical eligibility and exact payment amounts are determined by complex, ever-changing rules. Individuals applying for SSI disability benefits are, by definition, very poor. Most have little or no ongoing medical treatment or treating sources able to provide comprehensive records. SSI applicants are strong candidates for manipulation by others for financial gain. They are often the victims of others whose mission is to defraud the SSI program. ***Rather than increased pre-effectuation reviews, NADE believes a more effective use of resources to promote stewardship and ensure program integrity would be to increase the number of Cooperative Disability Investigation (CDI) units.***

To combat disability fraud, CDI teams rely on the combined skills and specialized knowledge of OIG investigators, state and local law enforcement officials and SSA and state DDS personnel. As experts in the disability area, NADE members play a key role in the process of detecting fraud and abuse within SSA's disability process. Our members have a unique opportunity to observe and assist in the process of detecting fraud and abuse. Both the Social Security Advisory Board and SSA's Office of Inspector General have stated in previous reports and congressional testimony that the experienced disability examiner is the most effective weapon SSA has at its disposal to combat fraud.

CDI units, which first became operational in 1998, have allowed SSA to avoid improper payments of over \$159 million. NADE supports the continued expansion of the CDI units to combat fraud and abuse in the disability program. Anti-fraud efforts such as these offer a visible and effective front-line defense for program integrity, and serve as a visible and effective deterrent to fraud. Instead of sending a message to the public that encourages appeals and increases administrative costs, the message sent to the public should be that it is not worth the risk to try to defraud the program.

In November 2002 SSA issued a Notice of Proposed Rulemaking (NPRM) to conduct pilot projects "...wherein we will request photographic identification from individuals filing for title II and title XVI disability benefits in specified geographic areas covered by the pilot projects. In addition, we would require individuals to allow us to take their photograph and we would make these photographs a part of the claims folder. We would permit an exception to the photograph requirement when an individual has a sincere religious objection. This process would strengthen the integrity of the disability claims process by helping to ensure that the individual filing the application is the same individual examined by the consultative examination (CE) physician." NADE supports such projects and urges Congress to provide appropriate resources to continue and increase these and other effective anti-fraud activities.

NADE also supports SSA's plans to increase the number of re-determinations to ensure greater payment accuracy. This would help ensure that claimants receiving SSI benefits are, in fact, eligible to do so. It is also critical that Continuing Disability Reviews (CDRs) be conducted in a timely manner. CDRs are not only cost effective, saving approximately \$9 for each \$1 invested, they play an important role in any return to work incentive. An individual who knows his or her claim will be reviewed at the appropriate time is more likely to explore vocational options. Unfortunately, with the increase in initial claims and the loss of targeted funds specifically designated to handle this workload, CDRs are likely to be delayed.

Adequate resources and staffing will be needed to ensure that these initiatives are effectively meeting our stewardship responsibilities. Additional adequate resources are needed to enable SSA and the DDSs to process the Special Title II Disability Workload. These individuals are receiving SSI but have been found to be potentially eligible for some type of Social Security disability benefit.

In her September 25, 2003 testimony before the House Ways and Means Subcommittee on Social Security, Commissioner Barnhart presented her approach to improving the disability determination process. This approach was designed to "shorten decision times, pay benefits to people who are obviously disabled much earlier in the process, and test new incentives for those with disabilities who wish to remain in, or return to, the workforce." Both formally and informally, NADE has provided extensive feedback to the Commissioner on the new approach. Our comments are summarized below. A flow chart incorporating NADE's suggestions was included in our April 29, 2004 Statement for the Record, and our complete comments and the accompanying flowchart are available on our website at www.nade.org.

NADE fully supports all efforts to allow earlier access to health care, treatment and rehabilitation needs of disabled individuals, as well as efforts to assist those individuals who wish to return to work by providing them the needed services to allow them to do so. We believe that early intervention efforts will provide improved service to the American public by providing needed treatment and services earlier in their disease process. This early intervention has the potential to decrease the lifelong disability payments that some individuals receive once they have been determined eligible for benefits. Although few details are available in the Commissioner's approach regarding potential demonstration projects, it appears that individuals chosen for participation in these projects could be screened based upon age, education, work history and claimant allegations. This type of data is currently collected in the initial disability interview; using these types of screening criteria would not require system changes or other modifications to the existing process. Therefore, NADE believes that a trained "technical

expert in disability” in a SSA field office could screen applicants for disability into these demonstration projects. Oversight of these projects could be done on a regional basis by regional expert units as proposed by the Commissioner.

NADE agrees with Commissioner Barnhart that successful implementation of AeDIB is a critical feature of any new approach to SSA disability determinations. NADE remains supportive of these new technologies as a means for more efficient service to the public. We believe that SSA’s goal of achieving an electronic disability claims process represents an important, positive direction toward more efficient delivery of disability payments. In order for an electronic folder to be successful, it is an absolute necessity that adequate infrastructure support and proper equipment to make the process work effectively and efficiently is in place. Without sufficient support, adequate resources and proper equipment, any attempts at an efficient paperless process will meet with failure. *While technology can be expected to reduce hand-offs, eliminate mail time and provide other efficiencies, technology is merely a tool. It cannot replace the highly skilled and trained disability examiner who evaluates the claim and determines an individual’s eligibility for disability benefits in accordance with Social Security federal rules and regulations.*

NADE strongly supports the Commissioner’s emphasis on quality as described in the new approach. By including both in-line and end-of-line review, accountability can be built into every step. We believe that this will promote national consistency that, in turn, will build credibility into the process.

Although the Commissioner’s approach envisions that “quick decisions” for those who are obviously disabled would be adjudicated in Regional Expert Review Units, NADE believes that the DDSs are better equipped in terms of adjudicative expertise, medical community outreach, and systems support to fast track claims and gather evidence to make a decision timely, accurately, and cost effectively. Previous attempts at separating the components of the decision making process demonstrated that the perceived improvements are less effective in practice than in theory. DDSs already process at least twenty percent of allowance decisions in less than twenty-five days. DDS disability examiners are well versed in the evaluation of disability onset issues, unsuccessful work attempts and work despite a severe impairment provisions to quickly and efficiently determine the correct onset for quick decision conditions.

Establishing a regional expert unit to handle this workload constitutes an additional hand-off of a claim with no value added to the process. We see no need to add another layer of bureaucracy to process quick decisions when such cases are already “triaged” and handled expeditiously by the DDS. In order to implement a regional expert unit for quick decisions, SSA would need to change its existing infrastructure to make these decisions and provide for hiring, training and housing staff. In addition, business processes would have to be developed to secure and pay for medical evidence of record.

Likewise, NADE does not support assigning the responsibility for Quick Decisions to the SSA Field Office. Even with additional training, we do not believe that SSA Claims Representatives will have the knowledge and skills necessary on an ongoing basis to adjudicate these cases. We are also concerned that assigning this responsibility to the SSA Field Offices will invite jurisdictional disputes between the DDSs and the SSA Field Offices as to what types of cases or alleged impairments actually constitute potential for “Quick Decisions.” In addition, we would point out that some Field Offices already struggle with the concept of recognizing presumptive disability claims and TERI (terminal illness) cases. Adding additional conditions or expanding their responsibilities in this area will require extensive time-consuming and expensive training to an already lengthy claims representative training period. **Experience with the Disability Claims Manager pilot demonstrated that there is too much complexity in both the claims representative and disability examiner positions to “merge” them into one.**

NADE would not oppose SSA Claims Representatives recommending cases for potential quick decisions but we do suggest that more extensive in-line quality assurance and end-of-line quality control be applied to this new process to ensure that those claims that deserve to be identified as having potential for “Quick Decisions” are so identified and that those that do not, are not so identified.

NADE is strongly opposed to the Commissioner’s proposal to remove onsite Medical Consultants from the DDS. As an integral part of the DDS adjudicative team, DDS medical consultants play a vital role in the disability evaluation process, not only in reviewing medical evidence and providing advice on interpretation, but also in training and mentoring disability examiners, as well as performing necessary public outreach in the community. The DDS medical consultant interacts with disability examiners on a daily basis and offers advice on complex case development or decision-making issues. He/she maintains liaison with the local medical community and has knowledge of local care patterns and the availability of diagnostic studies and state regulations to facilitate the adjudication process within the complex Social Security system.

Most disability applicants have multiple impairments involving more than one body system and require a comprehensive view of the combined limitations and resultant impact on function. Specialty consultants with limited scope and experience cannot fully assess the combined effects

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of multiple impairments on an applicant's functioning. The SSA programmatically trained DDS medical consultant has the education, clinical experience and decision-making skills, along with expertise in evaluating medical records and disease conditions and making prognosis predictions regarding a claimant's function and future condition, to more accurately assess the case as a whole.

DDS medical consultants are not only medical specialists — physicians, psychologists or speech/language pathologists— they are also SSA program specialists. *There is a very real difference between clinical and regulatory medicine and it takes at least a year to become proficient in Social Security disability rules and regulations.* The DDS medical consultant's unique knowledge of SSA's complex rules and regulations and regional variants of those regulations, their medical expertise in many fields and knowledge of local medical sources, and their familiarity with DDS examiner staff, quality assurance specialists and supervisors, make them an invaluable asset to the DDSs and the SSA Disability Program as a whole. It is critical that this expertise be on-site in the DDSs and readily available to the disability examiner for case consultation and questions. *If, as proposed under the Commissioner's approach, DDS disability examiners are to adjudicate primarily the more complex disability claims, then it becomes even more important to maintain DDS medical consultants on-site.*

The SSI disability program is unique among disability programs. The disability examiners who evaluate claims for SSI disability benefits must possess unique knowledge, skills and abilities. Those who adjudicate SSI disability claims are required, as a matter of routine, to deal with the interplay of abstract medical, legal, functional and vocational concepts. *It takes years before an individual becomes adept at this complex task.* Disability examiners are required by law to follow a complex sequential evaluation process, performing at each step, an analysis of the evidence and a determination of eligibility or continuing eligibility for benefits before proceeding to the next step. Adjudication of claims for SSI disability benefits requires that disability examiners be conversant (reading, writing and speaking) in the principles of medicine, law and vocational rehabilitation. The disability examiner is not a physician, an attorney-or a vocational rehabilitation counselor. Nevertheless, during the course of adjudication he or she must extract and employ major concepts that are fundamental to each of these professions.

The U.S. General Accounting Office declared in one of their reports to Congress that: "The critical task of making disability decisions is complex, requiring strong analytical skills and considerable expertise, and it will become even more demanding with the implementation of the Commissioner's new long-term improvement strategy and the projected growth in workload. NADE concurs with this assessment. A disability examiner must have knowledge of the total disability program as well as proficiency in adult and child physical and mental impairment evaluation, knowledge of vocational and job bank information and the legal issues which impact on case development and adjudication.

NADE has long supported an enhanced role for the disability examiner and increased autonomy in decision-making for experienced disability examiners on certain cases. We were pleased, therefore, that in NADE's discussions with Commissioner Barnhart, we were told that it was her intent in the new approach to enhance the disability examiner's role in the disability process. In order to achieve that, we believe that the Single Decision Maker (SDM) from the highly successful Full Process Model project and currently operating in the prototype and ten other states, should be fully integrated into the new approach. (Under the SDM model, medical sign-off is not required unless mandated by statute.)

Decisions regarding disability eligibility can be considered to be on a continuum from the obvious allowances on one end, through the mid-range of the continuum where only careful analysis of the evidence by both adjudicator and physician can lead to the right decision, and finally to the other end of the continuum where claims are obvious denials. It is at both ends of the continuum where the disability adjudicator can effectively function as an independent decision-maker. Using SDM to make the disability determination, and retaining the availability of medical consultant expertise for consulting on cases without requiring doctor sign off on every case, promotes effective and economical use of resources. It is prudent to expend our medical and other resources where they can most positively impact the quality of the disability claim.

Of all the "reengineered" disability processes proposed or piloted in the past, the SDM process has been the most successful. It has had a more positive impact on cost-effective, timely and accurate case processing than any other disability claims initiative in many years. Statistical results have shown that disability examiners operating under the SDM model in the twenty states, where this concept was tested, have the same or better quality than disability examiners operating under the traditional disability adjudication model. Studies of the SDM have demonstrated its value as an integral part of the Social Security Administration's disability claim adjudication process. ***NADE strongly believes that the SDM model should be integrated fully in any new initial claims process, expanded to Continuing Disability Reviews and adopted as standard procedure in all DDSs.***

The Commissioner, in her approach, has proposed establishment of a federal Reviewing Official (RO) as an interim step between the DDS decision and the Office of Hearing and Appeals (OHA). NADE agrees that an interim step is necessary to reduce the number of cases going to the OHA as much as possible. An interim step laying out the facts and issues of the case and requiring resolution of those issues could

help improve the quality and consistency of decisions between DDS and OHA components. NADE supports an interim step because of the structure it imposes, the potential for improving the accuracy of DDS decisions and processing time on appeals, and the correction of obvious decisional errors at the initial level before a hearing. The establishment of uniform minimum qualifications, uniform training and uniform structured decision-writing procedures and formats will enhance the consistency and quality of the disability decisions. *NADE is not convinced, however, that customer service is improved from the current process if this remains a paper review at this interim step.*

NADE believes that this interim step should include sufficient personal contact to satisfy the need for due process. We do not believe that it needs to be handled by an attorney as proposed by the Commissioner. There is little, if any, data that supports a conclusion that this interim step needs to be handled by an attorney. In fact, a 2003 report, commissioned by the Social Security Advisory Board to study this issue, recommended that this position **NOT** be an attorney.

Decisions made at all levels of adjudication in the disability process are medical-legal ones. NADE believes that Disability Hearing Officers (DHOs) can handle the first step of appeal between the DDS initial decision and the ALJ hearing. DHOs are programmatically trained in disability adjudication as well as in conducting evidentiary hearings. Using trained Disability Hearing Officers instead of attorneys will be substantially less costly. In addition, there is currently an infrastructure in place to support DHOs and using such a structure will prevent creation of a new costly and less claimant friendly federal bureaucracy. Since this infrastructure is already in place, national implementation of the DHO alternative can occur very quickly.

NADE supports closing the record after the Administrative Law Judge's decision since this decision will, under the Commissioner's proposed approach, represent the final decision of the Commissioner of Social Security before any subsequent appeal to the federal courts. We support providing the assistance of programmatically trained medical and vocational experts to the Administrative Law Judges.

NADE supports elimination of the Appeals Council review step. *We have long advocated establishment of a Social Security Court.* As long as judicial review of disability appeals continues to occur in multiple district courts across the country, a bifurcated disability process will continue to exist as different DDSs operate under different court rulings and regulations depending upon what part of the country the claimant lives in. Both the Social Security and SSI disability programs provide a vital safety net for an extremely vulnerable population. It is essential that these programs operate effectively while protecting beneficiaries and taxpayers alike from fraudulent payment and wasteful practices.

In summary, NADE's key recommendations are to implement only strategies with the most beneficial outcome for all entities. These are:

Expand CDI units to all states instead of increasing reviews of DDS allowance decisions.

Provide dedicated funding for redeterminations, CDRs and special Title II workloads.

Implement eDIB with adequate infrastructure support and proper equipment.

Keep Quick Decisions in the DDS.

Maintain Medical Consultants on-site in the DDS.

Fully integrate the SDM in to any new disability process.

Utilize the current infrastructure of DHOs as an interim appeals step.

Recognize that technology is only a tool. It does not replace the highly skilled, trained disability examiner.

NADE appreciates this opportunity to present our views on the SSI program, problems and solutions, and we look forward to working with the Social Security Administration and the Congress as the Commissioner continues to refine her approach to improve the disability process.

