

U.S. DRAFTS RULES LIMITING APPEALS ON SOCIAL SECURITY

By MARTIN TOLCHIN, SPECIAL TO THE NEW YORK TIMES
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Social Security officials have drafted new rules that would sharply restrict the rights of elderly and disabled people to appeal Government decisions denying Social Security, Medicare and welfare benefits.

The proposal by the Social Security Administration's Office of Hearings and Appeals noted that the agency currently is losing more than 50 percent of the cases that are appealed. It seeks to improve the Government's chances of winning and to reduce a growing backlog of claims by tightening the rules on the kinds of evidence that can be submitted at an appeals hearing.

"We propose to address this area by modifying our regulations and our operating policies to emphasize the importance of issuing soundly rationalized decisions based on well-defined, properly established records," the draft said.

5.5 Million Claims Last Year

The new rules could affect the rights of millions of people who seek or receive Social Security retirement or disability benefits, health insurance under Medicare or welfare benefits under the Supplemental Security Income program for the aged, blind and disabled. Last year the agency received 5.5 million claims and more than 300,000 appeals from its rulings.

Dr. Otis R. Bowen, Secretary of Health and Human Services, had not yet seen a draft of the proposals and had no opinion on it, according to an aide. The proposals require Dr. Bowen's approval to go into effect.

A Social Security Administration spokesman said agency officials recently completed making comments on the proposal and that a final decision was not likely until early next year.

Formalized Appeals Process

The thrust of the new rules would formalize an appeals process that is now informal. The rules would bar new evidence of a disability or evidence of new disabilities in the appeals process and limit a person's ability to obtain a full review of all issues when appealing an unfavorable decision either within the Department of Health and Human Services or in Federal Court.

For example, if a person was disabled by a tumor that later turned out to be cancerous, the person could not offer evidence of the cancer without beginning a new appeals process.

The draft proposal said that new restrictions were needed because the appeals process "faces staggering caseloads." In addition to receiving the 5.5 million claims last year, the agency also got 250,000 requests for hearings by administrative law judges, 57,000 requests for further reviews and 11,000 new civil actions in Federal district courts, which had a backlog of 44,000 Social Security cases. "The numbers of

cases requiring hearing and further review jeopardize the capacity of the process to serve the interest of justice effectively," the draft said.

Critics found it puzzling that the agency would seek to alter the regulations in order to make the appeals process more difficult. "They can't win on the substantive issues, so they're trying to prevent people from appealing to the courts," said Eileen Sweeney, a lawyer with the National Senior Citizens Law Center, which provides legal services to the elderly poor. "It's one more example of the hostility this Administration has toward the people these programs are intended to serve."

The Reagan Administration sought cuts in Social Security almost from the time it took office in 1981.

First of Such Restrictions

The draft rules marked the first such proposal to restrict the appeals process in the Social Security Administration's 40-year history, said Philip Gambino, a spokesman. "We're trying to improve the efficiency of the appeals process," he said.

Larry W. Mason, executive assistant to the director of the Office of Hearings and Appeals, said, "Everybody in the Social Security Administration agrees that this effort is long past due."

But in a confidential memorandum analyzing the plan, Randolph W. Gaines, the health agency's deputy chief counsel for Social Security, said that the rules "might be viewed by the public as an attempt by the agency to place unnecessary and burdensome barriers" on people exercising their right to judicial review.

He noted that the Supreme Court ruled in a 1971 case, *Richardson v. Perales*, that Congress wanted an "informal" and "liberal" appeals process accessible to a population that was elderly, poor, disabled and usually without legal counsel. Moreover, the Court ruled that Congress intended the process to be "understandable to the layman claimant."

He said the new rules would probably be challenged in the courts as "excessively formalistic and burdensome, and therefore in conflict with what the *Perales* Court determined to be appropriate under the Act."

Andrew Jacobs Jr., an Indiana Democrat who is chairman of the House Ways and Means Social Security Subcommittee, said no such revisions were necessary. "It isn't broke, and it doesn't need fixing," he said through an aide.

Legal Right to Hearing

Under the Social Security Act of 1935, a person who is denied benefits has a legal right to a hearing before an administrative law judge and may also appeal that ruling in Federal court.

Under the proposed rules, a person seeking benefits would have to submit all evidence at least seven days before the date set for a hearing before an administrative law judge. Under the current rules, there is no such requirement.

In addition, under the proposed rules a person not showing "good cause" could be denied a hearing for failure to meet that deadline. Under current rules, a person may submit evidence at the hearing, and later if necessary.

Mr. Gaines's memorandum said that under the proposed rules, a person would virtually have to anticipate the judge's questions in order to submit all relevant evidence in advance. The Social Security Act says that a claim shall be decided on the basis of evidence submitted at, not before, a hearing.

Under current rules, the highest decision-making authority in Health and Human Services, the Appeals Council, reviews the decisions of administrative law judges in Social Security and Medicare cases. The proposed rules would replace the council with an Appeals Board, which would not review the entire record in a case, but only specific issues raised by the person claiming benefits.

A person denied benefits by the board could appeal to a Federal court, but the Government could demand that the court limit its review to issues raised before the board.

Under another rule change, the appeals board would not consider new evidence that a person obtains after a hearing before an administrative law judge. The applicant would have to reargue the claim and ask for a review of the additional evidence.

Also, the Social Security Administration would be empowered to prevent Federal courts from reviewing cases in which a person asserted that an administrative law judge had improperly refused to consider "new and material" evidence. Under current rules, courts often consider such cases.

Deadlines would also be stricter. A person challenging the denial of benefits would still have 60 days to appeal an unfavorable decision. But the person would have only 30 days after the normal appeal time to show "good cause" for missing the deadline. Currently, there is no such limit.

Leaders in Congress Oppose Cutting Appeals on Benefits

By MARTIN TOLCHIN, SPECIAL TO THE NEW YORK TIMES
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Three Congressional committee chairmen predicted today that Congress would block proposed rules that would sharply restrict the rights of elderly and disabled people to appeal Government decisions denying Social Security, Medicare and welfare benefits.

The A.F.L.-C.I.O. also assailed the proposed rules, as did groups representing the elderly.

The proposal by the Social Security Administration's Office of Hearings and Appeals noted that the agency loses more than 50 percent of the cases that are appealed. It proposed tightening the rules on the kinds of evidence that can be submitted at an appeal hearing so as to improve the Government's chances of winning and to reduce a growing backlog of claims.

Senator Daniel Patrick Moynihan, a New York Democrat who is chairman of the Social Security Subcommittee of the Senate Finance Committee, said that he would hold hearings on the proposal soon after Congress reconvenes in January "unless they scratch the whole thing." **Could Affect Millions**

"There's not a prayer that Congress will allow it," the Senator said. "They're doing this not because they need to modernize, but because they're losing too many appeals. Instead of saying, 'Maybe we shouldn't turn these people down and then lose the appeals,' they find a way to keep these people from appealing in court."

The proposals could affect millions of people who seek or receive Social Security retirement or disability benefits, health insurance under Medicare or welfare benefits under the Supplemental Security Income program for the aged, blind and disabled. In the fiscal year that ended Sept. 30, the agency received 5.5 million claims and more than 300,000 appeals from its rulings.

The rules would bar new evidence of a disability or evidence of new disabilities in the appeal process. They would also limit a person's ability to obtain a full review of all issues when appealing a decision either to the Department of Health and Human Services or in Federal court. **Accountability Faulted**

Noting that the proposal had not been seen by Dr. Otis R. Bowen, the Secretary of Health and Human Services, Mr. Moynihan said the proposal provided the latest reason why the Social Security Administration should be made an independent agency, directly accountable to Congress.

"In the present arrangement, the Social Security Administration isn't responsible to anybody," Mr. Moynihan said. "It nominally reports to the Secretary of Health and Human Services, but it really doesn't."

Dr. Bowen declined to comment. "The Secretary has not even seen the proposal and therefore has no comment," said Chuck Kline, a spokesman. The Social Security Administration said the Commissioner, Dorcas R. Hardy, had not made a final decision on the rules yet.

Representative Edward R. Roybal, a California Democrat who is chairman of the House Select Committee on Aging, said, "You can be sure that Congress will strongly oppose the proposed rules."

And Representative Thomas J. Downey, a New York Democrat who is acting chairman of the Public Assistance Subcommittee of the House Ways and Means Committee, said his panel would examine the regulations within the next few days. He predicted "a very negative reaction from the Congress." Letter to Bowen

Mr. Downey was one of three Ways and Means subcommittee chairmen who wrote to Secretary Bowen today protesting the proposed regulations. The others were Representative Fortney H. (Pete) Stark, a California Democrat who is chairman of the Health Subcommittee, and Representative Andrew Jacobs Jr., an Indiana Democrat who is chairman of the Social Security Subcommittee.

"To impose rigid and unreasonable bureaucratic burdens on an elderly, disabled, sick or poor individual at a hearing on what may be their lifeline is cruel and inhumane," they wrote.

The chairman of the House Rules Committee, Representative Claude Pepper, a Florida Democrat, denounced the proposal as "a callous, heartless, brutal assault by this Administration on the most helpless and disabled in our country." He called upon President-elect Bush "to personally intervene and stop the implementation of this proposal."

The A.F.L.-C.I.O. also urged the Bush administration to reject the proposal, saying it "would especially hurt disabled people."

A spokesman for President-elect Bush's transition team said that Bush aides were not informed of the proposed rule changes in advance and had not focused on them. Job Prospects Seen Damaged

Some Congressional aides privately predicted that hostility to the proposal could adversely affect the chances that two Social Security Administration officials might be approved for jobs in the Bush administration.

They are Commissioner Hardy, who has been mentioned as a possible Secretary of Health and Human Services, and Eileen Bradley, director of the Office of Hearings and Appeals. She has been mentioned as a possible successor to Miss Hardy.