



A Partnership of The Arc & United Cerebral Palsy

December 20, 2007

Michael J. Astrue  
Commissioner of Social Security  
P.O. Box 17703  
Baltimore, MD 21235-7703

Filed at: [www.regulations.gov](http://www.regulations.gov)

**Re: Docket No. SSA-2007-0044, Proposed Rule on Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels**

Dear Commissioner Astrue:

Thank you for this opportunity to submit comments on behalf of The Arc of the United States and United Cerebral Palsy on the Proposed Rule on Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels, 72 Fed. Reg. 61218 (Oct. 29, 2007).

The Arc of the United States, the oldest and largest advocacy organization for people with intellectual and developmental disabilities and their families, is devoted to promoting and improving supports and services for people with cognitive, intellectual, and related developmental disabilities and their families. United Cerebral Palsy (UCP) is one of the largest charities in America and works, through its affiliate network, to advance the independence, productivity and full citizenship of people with disabilities.

The Arc and UCP serve and/or represent over a million children and adults who must rely on the Social Security disability programs, Supplemental Security Income, Medicaid, and Medicare for their daily health and welfare. The regulations which guide determination of their initial and continuing eligibility for the Social Security and SSI programs are, therefore, of critical importance to them. Our comments below are based on protecting the due process rights of the claimant, including ensuring that the claimant has a full and fair hearing with impartial fact-finding and adjudication.

We strongly support two of the changes addressed in the NPRM.

- We support the new requirement that Administrative Law Judges (ALJs) notify the claimant of the hearing date 75 days in advance. We believe that this will substantially assist claimants and their representatives in preparing for the hearing.
- We support the NPRM approach of allowing the claimant to appeal all unfavorable ALJ decisions to the newly-named Review Board. This repairs what we believed to

be a substantial weakness in the Disability Service Improvement approach where few decisions could be appealed by the claimant to the Decision Review Board.

Both of the changes discussed above would protect the rights of the claimant in a process intended to determine whether the claimant meets the criteria established for eligibility for the Supplemental Security Income and Title II disability programs. These changes support the claimant in making his/her case regarding eligibility.

However, we have grave concerns about many of the proposed changes to the disability determination appeals process because they would limit the claimant's ability to present evidence aimed at proving that he/she meets the requirements of the disability program. These changes would impose new hurdles for the claimants and representatives and would make it possible for eligible individuals to be denied benefits on the basis of technicalities.

The price tag for these changes is exorbitant when measured in terms of lost eligibility for individuals with severe disabilities. While the NPRM measures savings against the current DSI program which would be gradually established nationwide over a 10-year period, SSA's own actuaries estimate that the savings are over \$2 billion when measured against the disability determination process in operation throughout most regions of the country.

The "savings" represent a reduction of over \$2 billion in benefit payments that would have otherwise been made over a 10-year period. This means that people who would have been found eligible under the regulations currently operating in most regions of the country will not be found eligible due to the barriers established by the proposed rules. A change of this magnitude should not be made by regulatory changes in the *procedures* for determining who meets the legal criteria for eligibility. Rather, the procedures should be designed to ensure that those claimants who meet the eligibility criteria and are, therefore, entitled to the benefits are found eligible in the quickest, most efficient way possible, without artificial hurdles to overcome at a time in life when they are particularly vulnerable.

For the reasons stated above and further elaborated upon in the comments to be filed by the Consortium for Citizens with Disabilities, we oppose the following changes proposed in the NPRM and urge that they not be published as final:

- Limits on submission of evidence – Closing the record 5 business days before the hearing and substantially limiting the circumstances under which the ALJ or Review Board could consider late evidence.
- Requiring the claimant to submit a statement explaining how late evidence meets the strict criteria for an exception.
- Forcing claimants to file new applications for evidence that is late, as a result of the limits on submission of evidence.
- Limits on the ability to reopen prior applications for good cause.

- Limits on the ability to change the time and place of the hearing due to unforeseen circumstances.
- Requiring the claimant to object to the issues in the notice of the ALJ hearing.
- New time limits for acknowledging receipt of the hearing notice and requesting subpoenas for production of witnesses or documents, among others.
- ALJ discretion to dismiss the appeal if neither the claimant nor the representative attends the pre-hearing.
- Limits on a claimant's ability to correct an erroneous ALJ decision.
- Requiring payment for a copy of the record if the claimant appeals to the Review Board.

These and other proposed changes place claimants at a disadvantage through new and complicated procedural hurdles and through requirements that make the process excessively formal and legalistic. Again, we believe that these procedural hurdles should not be allowed to deprive a claimant of essential benefits to which they are entitled.

Finally, we support the more detailed comments to be submitted by the Consortium for Citizens with Disabilities and incorporate them here by reference.

We appreciate this opportunity to comment on the proposed rules. If you have any questions on the above comments, please contact Marty Ford (202-783-2229 or [ford@thedpc.org](mailto:ford@thedpc.org)).

Sincerely,

Lorraine Sheehan  
The Arc of the United States

Mark Lezotte  
United Cerebral Palsy

Co-Chairs, The Arc and United Cerebral Palsy Disability Policy Collaboration Steering Committee