

United States Senate

WASHINGTON, DC 20510-4802

December 21, 2007

The Honorable Michael J. Astrue
Commissioner
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

Dear Michael,

I appreciate your attention to the issue of the Social Security backlog on disability claims. I have been working with my colleagues throughout the year to help secure additional funding for the agency to deal with the backlog.

I am writing to express serious concerns about some of the proposed changes to the Social Security administrative law judge (ALJ) and appeals process, contained in the Notice of Proposed Rulemaking issued on October 29, 2007 (NPRM). While the goal of increasing the speed of reviews for disability cases is encouraging, the new proposals could hinder due process and unfortunately increase the number of denials of otherwise qualified applicants who miss procedural hurdles because they do not understand the system or do not have full cooperation from medical providers.

Congress and the Supreme Court have long recognized the Social Security Administration's (SSA) appeals process is intended to be an informal and non-adversarial process, therefore it should not impose strict rules of evidence. The procedures need to be understandable to layman claimants, fundamentally fair, and informal. The neediest claimants often apply for benefits without the assistance of attorneys and try to navigate the system alone. The proposed changes seek to add strict formal rules to a process intentionally designed to be informal. The proposed changes could close the door to access to a fair hearings process and threaten the due process rights of individuals with disabilities entitled to Social Security benefits.

It is troubling that the proposal would restrict the evidence a claimant may introduce at a hearing by closing the record 5 days before the hearing. The ALJ can only accept the "late" evidence if the claimant meets one of three limited discretionary exceptions. Other new restrictions impose limits on new evidence at the post-hearing and Review Board stages. These changes may improve the government's chances of winning, but at the expense of the applicant. The restrictions ignore the difficulty in obtaining medical records as well as the fact that medical conditions change and some claimants' physical or mental conditions make it difficult to participate in the appeals process.

Arbitrarily limiting the claimant's right to submit evidence directly to the ALJ at the hearing violates the statutory right to a decision based upon evidence "adduced" at a hearing and eliminates the ALJ's duty to fully and fairly develop a record. The proposed changes will increase appellate traffic in federal courts because claimants are forced to appeal to a court just to have SSA consider improperly rejected evidence of their condition. The burden on ALJs will

increase as federal courts remand cases to ALJs to hear the evidence they originally improperly rejected – especially evidence of a worsening condition.

While the proposed rules reinstate an administrative review of ALJ decision by the newly created Review Board (RB), they restrict the scope of the review by the RB and the court to the period of time ending on the date ALJ makes the original decision. Under current law, claimants can submit new evidence of a worsening condition that occurs after the ALJ's original decision. Under the proposed changes, if impairments worsen during the appeal of the ALJs decision, claimants cannot submit new evidence of the change. They are forced to re-file multiple claims. If they choose to re-file, they not only lose benefits from the eligibility date of their first application, they are also forever foreclosed from disability benefits if their insured status expired before the first ALJ decision. This also means individuals with progressive disorders such as multiple sclerosis, can be forever foreclosed from Medicare coverage, unless they can prove another disability and survive another 24 month waiting period. Claimants would also lose access to work incentives such as the trial work period.

This notice raises many troubling issues and I urge you to take time to carefully review the concerns listed and to consider all the public comments before making any final decisions on the proposal.

The Consolidated Omnibus Appropriations package includes new resources that should help the Social Security Administration address the issue of the backlog in better ways than strict rules. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John", written in a cursive style.

John D. Rockefeller IV