These are my responses to the May 14, 2013 questions:

1. As noted in my written testimony, pain and other symptoms are required to be considered as early as the second step in the sequential evaluation process. Therefore, in almost every case before me, I was required to consider the claimant's allegations of pain. I considered everything in the record when evaluating pain, including the objective evidence, medical and lay opinions, and the other factors set forth in 20 CFR 404.1529 (medications, activities of daily living, etc). All of these factors needed to be considered, evaluated, and discussed in every hearing decision that was not fully favorable to the claimant. If this discussion omitted certain factors or evidence, the case could be remanded by the Appeals Council or the courts. These overly burdensome articulation requirements set forth in the Social Security Rulings stem in large part from court interpretations of the Disability Benefits Reform Act of 1984. Each Circuit Court's interpretation is slightly different, but some essentially require an ALJ to rebut subjective claims by the claimant. For example, the Ninth Circuit has an "excess pain" standard, indicating that "if the claimant submits objective medical findings that would normally produce a certain amount of pain, but testifies that she experiences pain at a higher level, the Secretary is free to decide to disbelieve that testimony…but must make specific findings justifying that decision." Cotton v. Bowen , 799 F.2d 1404, 1407 (9 Cir., 1986). In essence, these evidentiary requirements have placed a burden of disproving subjective disability on the Commissioner.

2. Once a medically determinable impairment is established, all evidence, objective and subjective, must be considered. This means that the subjective evidence (claimant's statements regarding pain, for example) must be evaluated in practically every disability case. Adjudicators do weigh the evidence regarding the claimant's allegations of pain differently, thus leading to many inconsistent decisions, in my opinion. Consistency and uniformity of decision making should be the Agency's goal in order to be fair to all claimants, yet the emphasis on subjective factors in the regulations and rulings creates the opposite effect.

3. At step 5 the burden shifts to the Commissioner to determine whether the claimant can do other work that exists in significant numbers in the national economy. This burden can be satisfied by the Medical-Vocational Guidelines, but only in very few cases as those Guidelines only apply to solely exertional limitations. ALJs usually discharge this burden by calling a vocational expert to the hearing to give impartial vocational testimony. DDSs do not have vocational experts, and instead train their adjudicators on the Dictionary of Occupational Titles. Because DDSs do not have vocational experts to help determine the issue of significant numbers, the DDS employs an "erosion of the occupational base" test, where they look to see if other nonexertional or exertional limitations erode the occupational base. The ALJs follow the statutory and regulatory language requiring the Commissioner to show that a significant number of jobs exist or do not exist. That requirement cannot be met by erosion but rather by

expert opinion. In my opinion, these two different tests employed by different adjudicative levels contribute greatly to inconsistent decision making. Regarding the training of vocational experts, as I noted in my testimony there is no formal training given to vocational experts by SSA. In addition, there is nothing in the regulations regarding the training, experience, or qualifications of vocational experts. In the Philadelphia region where I worked, I believe vocational experts needed to have a minimum of a Master's degree in rehabilitation, but I am not aware what the standards are in other areas of the country.

4. The concept of "controlling weight" is confusing to adjudicators and is thus not applied uniformly. The regulations place emphasis on the treating source's unique relationship with the patient, but they go further to state that if the treating source opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it controlling weight." 20 CFR 404.1527(d)(2). What does "other substantial evidence" mean? It is not explained. Some adjudicators view this language as essentially meaning that if there is a treating source opinion in the record that says the claimant is disabled, then it trumps all other evidence and is given controlling weight. Others view the language to mean that if there is any other piece of evidence that would be contrary to the treating source opinion, then the controlling weight standard could not be applied. When I reviewed ALJ decisions in Peer Review and on the Appeals Council, I found that many ALJs interpreted this regulation differently, given the ambiguity and lack of clarity of the language. This has led to inconsistent decision making.

5. I believe I have answered this question in response to questions 1 and 2. Credibility in SSA parlance means the credibility of the claimant's statements regarding pain and other symptoms. I have already noted that there are many factors required to consider allegations, resulting in an overly onerous burden placed on the adjudicator.

6. This is an area where SSA must improve. It is often late in responding to statutory changes. For example, SSA responded to the 1996 Contract with America Advancement Act regarding cases involving drug addiction and alcoholism by issuing an "Emergency Teletype" in 1997. This "emergency" memo was not replaced by formal, binding policy until this year - 17 years after the law was enacted. During those 17 years adjudicators floundered and guessed as to how to adjudicate cases where drug addiction and alcohol were involved. Thousands of cases were adjudicated without any clear guidelines or legally binding policy, leading again to inconsistent decision making.

7 I have testified that the courts have had a significant impact on the program, particularly since the 1984 Amendments. SSA has capitulated to court interpretations of those Amendments, particularly in the area of treating source opinion and the consideration of the claimant allegations of pain and other symptoms. Regarding the Acquiescence policy, I do not believe the Acquiescence Rulings themselves have had a significant impact on consistency. The Rulings that have been published since the policy took effect in 1985 have not affected great numbers of cases. What has happened, however, is that in considering circuit court holdings that affect a significant amount of cases, such as in the area of treating source opinion and the standards on evaluating pain, the Agency has chosen to either adopt the circuit court holding nationally or has claimed that the holding does not vary with Agency policy and in fact reflects policy accurately (Polaski and Schisler are two examples).

8. I do not have concerns with video hearings, and in fact testified that claimants should not have a unilateral right to decline video hearings. Thousands of hearings have been conducted by video, with no challenges (that I am aware of) to the due process nature of such a proceeding. The technology allows the ALJ to see and her all parties clearly.

9. The CDR process is not working. I never assumed that when I set a diary date in a decision that it would be complied with by SSA in a timely manner. The language in ALJ decisions setting diary dates is merely precatory, and this is based on years of experience. CDRs are not conducted timely, usually because of outside influences, such as budget and workload. I believe a better approach is the one I recommended in my written testimony. There should be an expert panel convened to determine and establish guidelines for setting periods of disability, based on the impairments involved, the claimant's age, etc. Not all claimants are permanently and totally disabled, yet SSA treats them that way. Many conditions get better with time and/or treatment. Claimants found disabled but with treatment should improve would be given a specified term of benefits. After the expiration of that term, if they believe they are still totally disabled, they can reapply at that time. Because these would be the cases where persons should improve and return to the work force, I would eliminate all work tests during the disability term for these individuals and allow them to return to work without any penalty.

Thank you again for the opportunity to testify and present my views. I am pleased that the subcommittee is focusing on SSA's disability policies.

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