



NATIONAL COUNCIL OF DISABILITY DETERMINATION DIRECTORS

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May 23, 2013

Representative Sam Johnson, Chairman
Attn: Kim Hildred, Staff Director
Subcommittee on Social Security
Committee on Ways and Means
U. S. House of Representatives
B-317 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Johnson,

Thank you again for providing the opportunity for NCDDD to present testimony at the Committee on Ways and Means, Subcommittee on Social Security hearing on March 20, 2013 concerning to the challenges of achieving fair and consistent disability decisions.

The following are my responses to your questions for the record:

1. What training are DDS examiners given to prepare them to assess limitations regarding pain? How do examiners evaluate allegations of pain? Since everyone's threshold for pain is different, does that mean that different examiners could weigh information about pain differently?

Examiner training in assessing limitations regarding pain includes the relevant sections of SSA's standard Disability Examiner Basic Training Package and intensive mentoring and supervision over many months as examiners learn to apply the criteria case by case. Medical consultants are provided program education via SSA's Medical/Psychological Consultant Handbook.

Examiners apply the criteria in Social Security Rulings 96-3p, 4p and 7p, and follow related Social Security policy guidance to evaluate the severity and functional impact of symptoms and the credibility of the claimants' statements regarding these issues. They weigh the evidence, analyze and resolve any apparent contradictions in the all the information, and assess the medical and other evidence that helps to describe the impact on the individual claimant. They obtain input from DDS medical consultants as needed or required.

Whenever subjective information is weighed and analyzed, there is the possibility of different decision makers coming to different conclusions. The policy guidelines are designed to ensure that decision makers consider the same factors and go through the same decision process.

2. On page 7 of your testimony, you discuss the history of the medical improvement review standard, how it works and your recommendation for a review of this standard. During a

continuing disability review, a person's benefits can be stopped if an examiner determines that they have medically improved. At this Subcommittee's March 13, 2013 hearing, we learned that some people are receiving benefits for as many as 12 years on average. If a person was determined to be disabled 12 years ago and their condition has not changed, but they would not qualify for disability benefits under today's standards, what happens? What if the file doesn't have a lot of information in it or somehow gets lost? Can someone be deemed medically improved then?

Generally, if a person's condition has not changed since the last favorable determination, they will be found still disabled under the Medical Improvement Review Standard, even if they would not meet today's standard. There are a few narrowly defined exceptions (see page 7 of my testimony).

If material from the prior file is lost, and the person's current medical condition does not meet the current disability standard, SSA and DDS reconstruct the prior file to the extent possible. If the reconstruction results in adequate evidence to clearly document the basis for the comparison point decision (most recent favorable decision), the DDS applies the medical improvement standard. If a lost folder cannot be adequately reconstructed, SSA policy directs that a favorable current decision must be made [20 CFR §404.1594(c)(3)v].

Electronic disability folders are less apt to be lost. As more time elapses since the advent of SSA's electronic folder system, lost folder situations should become more rare and less problematic.

3. As part of the decision-making process, examiners may be required to determine if a person has the functional ability to do jobs that exist in the national economy. How do examiners determine whether these specific jobs exist in significant numbers in the national economy? Do you have access to experts or do you rely on the outdated Dictionary of Occupational Titles?

As directed by SSA, examiners use the Dictionary of Occupational Titles (DOT) and other guidance provided by SSA in regulations, rulings and the Program Operation Manual System (POMS). Some DDSs have specific employees trained as vocational specialists. These are experts in the Social Security Disability Program's vocational policy.

The DOT has not received a substantive update in many years, and the Department of Labor database that replaced it (O*NET) does not provide sufficient information for the requirements of disability determination. A new Occupational Information System is in planning and development stages with SSA and the Bureau of Labor Statistics. In the meantime, use of the DOT provides greater consistency in decision-making than would exist if each DDS based their vocational assessments on local expert opinions alone. The statutory requirement is the inability to perform occupations in the *national* economy, not whether jobs in these occupations exist in the *local* economy.

4. On page 4 of your testimony, you stated that examiners have to give controlling weight to treating source opinions in certain circumstances. What does "controlling weight" mean?

When a treating source medical opinion is well supported by objective medical evidence and not inconsistent with other substantial evidence, SSA policy directs adjudicators to give it controlling weight. This means that the opinion must be adopted in the disability determination (Social Security Ruling 96-2p). Controlling weight does not apply to legal conclusions such as whether a person's impairment meets or equals the Listings, or whether the person is "disabled" (Social Security Ruling 96-5p).

5. In your testimony you stated that a credibility assessment is not a “gut feeling” about the person’s overall truthfulness, but rather an evaluation of whether the medical findings and other evidence support what the person says. Furthermore, you noted that examiners cannot disregard what the person says solely because the objective medical evidence does not substantiate them. What does the finding of credibility come down to?

The finding of credibility comes down to the degree to which a person’s statements can be believed and accepted as true based on the degree to which the statements are consistent with the objective medical and other evidence in the record. Credibility is not an all-or-nothing finding: the person’s statements may be found partially credible.

6. Can you discuss why, in Fiscal Year 2012, the Puerto Rico DDS awarded benefits 59.1 percent of the time, when the Mississippi DDS awarded benefits 25 percent of the time?

Allowance rates can be affected by many factors, including regional demographic and economic factors. NCDDD does not have knowledge of DDS-specific circumstances and cannot address this question. Please refer this question to SSA.

7. Does Social Security require a claimant to fully complete the application for benefits, or does DDS have to contact the claimant to fill in any gaps in the application? What percentage of applications is complete when they arrive at a DDS, with all information needed to make a decision? What type of information is most often missing?

SSA Field Offices have responsibility for overseeing the application process. NCDDD does not have data to show the percentage of application forms that are/are not completed by the claimant or what information is most often missing. In practice, the need for SSA or DDS to clarify or obtain further information depends on the specifics of the individual claim. For example, detailed vocational information is generally unnecessary if the claimant’s condition meets or equals a medical listing.

8. Is the claimant required to bring in medical evidence? How much time does it take an examiner to get all the information needed to make a decision? What percentage of an examiner’s time is spent tracking down information, as compared to making a decision about a case? If claimants were required to submit all information, would it speed up the decision making process?

If claimants have copies of their medical evidence, they are encouraged to submit it. Otherwise, DDSs generally obtain the medical evidence. The time it takes to do so varies considerably depending on individual case situations. The proportion of time spent “tracking down information” versus making a decision varies from case to case and from medical source to medical source.

Requiring claimants to obtain and include all their medical evidence with their application would likely extend rather than speed up the claim process. DDSs have business processes and electronic tools that make obtaining medical evidence a very efficient process. Our evidence requests are tailored to what is necessary and pertinent to the disability determination for the specific case, whereas the claimant does not know this and could spend considerable time getting copies of records that have no bearing on the case. Often a claim can be decided *favorably* on one or a few pieces of evidence without waiting for all the evidence to arrive.

Having the DDS obtain the evidence directly from the medical sources also is a good way to protect against potential fraud (filtering or tampering with the evidence).

9. What role does a DDS examiner have in making the initial decision? What role does the doctor have in making the initial decision? What are the qualifications for a disability examiner? Does the level of education required vary by State?

The examiner and the doctor are considered an adjudicative team. The examiner is responsible for the overall disability determination, which requires synthesis of many factors – programmatic, vocational and onset-related as well as medical/functional. The doctor provides input for the assessment of medical severity and/or residual functional capacity. Twenty DDSs operate under the “Single Decision Maker” test regulations; in these DDSs, specially trained “SDM” examiners have the authority to make determinations within certain parameters based on the SDM’s programmatic medical expertise with or without consultation with a medical consultant.

Qualifications for DDS examiners are defined by the states that employ them. Different states may have different educational and experience requirements. Most require a Bachelor degree or equivalent. All provide a rigorous training program for new examiners, followed by intensive mentoring and supervision until the examiner has demonstrated the capacity to maintain performance standards for accuracy, timeliness, and productivity.

10. How does Social Security ensure that training for DDS examiners is provided consistently nationwide? What professional development and continuing education opportunities are offered to ensure are examiners have the skills needed to make decisions effectively?

SSA maintains the Disability Examiner Basic Training Package and the Medical/Psychological Consultant Handbook, as well as many other training resources, including video on demand and PowerPoint training presentations, online case studies, national “policy dialogue” conference calls, desk guides, and online indices of policy guidance.

The effectiveness of examiners’ decision-making is ensured on the front line through DDS internal quality assurance and performance measurement. Social Security ensures it through federal quality reviews, analysis of the data from these reviews, and development of training and/or clarification of policy based on the results. The electronic case analysis tool (eCAT) also provides examiners and medical consultants a policy-compliant decision guide for each case with links to relevant online policy guidance.

Individual DDSs offer professional development and continuing education opportunities to their employees. For example, some have career ladders based on levels of expertise and performance.

11. How does Social Security limit your ability to pay for expert opinions? Would access to more experts help make better decisions?

Social Security works with the DDSs to determine our budgetary needs, which routinely include the cost of medical and psychological consultants for case assessment and consultative examinations by various specialties, and in some DDSs, vocational specialist positions (see #3 above). SSA provides funding authorization to the DDSs, as available within the overall SSA/DDS budget limitations.

SSA and DDS must prioritize their expenditures, especially in tight budget times. Fee schedules for specialist services are generally guided by Medicare rules and/or State policies. The focus is on policy compliance. If fully funded and if the experts were fully trained in Disability Program policy as well as their area of expertise, using them might help make better decisions.

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Thank you for allowing me the opportunity to address these questions. As always, NCDDD remains available to provide input to the Subcommittee on the complexities of disability decision making and possible approaches to the critical situation facing the Social Security Disability Program. NCDDD members stand ready to participate in the solutions necessary to secure this vital program for present and future generations.

Sincerely,

A handwritten signature in blue ink that reads "Trudy Lyon-Hart". The signature is written in a cursive style and is placed on a light blue rectangular background.

Trudy Lyon-Hart
President, NCDDD