

The opinions and positions stated in this submission for the record are personal and do not represent the opinions and positions of any other person or organization. This statement submitted for the record should be attributed only to:

NAME: LARRY J. BUTLER
ADDRESS: ADMINISTRATIVE LAW JUDGE
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION & REVIEW
3650 COLONIAL BOULEVARD, SUITE 210
FORT MYERS, FL 33966-1157
TELEPHONE: 888-462-1109 X 15500
CONTACT E-MAIL ADDRESS: Larry.J.Butler@ssa.gov
TITLE OF HEARING: HEARING ON THE SOCIAL SECURITY DISABILITY FRAUD
SCHEME IN NEW YORK
DATE OF HEARING: JANUARY 16, 2014

DATE OF SUBMISSION: JANUARY 26, 2014

Dear Chairman Johnson, Ranking Member Becerra and Subcommittee Members,

Please review the copy below of an E-mail dated October 9, 2013 directed to Acting Commissioner of Social Security (COSS) Carolyn W. Colvin. A copy of the October 9, 2013 E-mail was simultaneously forwarded to numerous other Office of Disability Adjudication & Review (ODAR) managers.

No acknowledgement of receipt or response to my October 9, 2013 E-mail was ever received from Acting COSS Colvin or any other ODAR manager.

My October 9, 2013 E-mail recommends that fees remitted directly by the Social Security Administration (SSA) to representatives (both attorney and non-attorney) be posted on-line. At the present time, SSA withholds approximate \$2 billion per year in retroactive claimant Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits which is paid directly to representatives for fees.

Why is SSA involved in collecting fees for representatives? Are the amounts of fees that representatives are currently authorized to charge for claimant representation in the disability determination and adjudication process excessive and unjustifiable?

Thank you.

From: Butler, Larry J.

Sent: Wednesday, October 09, 2013 12:04 PM

To: Colvin, Carolyn

Cc: Sklar, Glenn; Borland, Jim; Bice, Debra HQ ODAR; Garmon, Ollie; D'Alessio, Rossana; Evans, M. Dwight; Evans, George L.; Pearce, Charles C. ODAR Hattiesburg HO; Strauss, Hazel C.; Rodriguez, David; Snook, Thomas; McLaughlin, Patrick F.; Gilbert, Michael; Willy, Donald J.; 'Wenzel William (wawenz@gmail.com) (wawenz@gmail.com)'; Eppler, Rita S.; Gold, Joe; Davenport, G. William; Auslander, Charles; 'Frye, D. Randall'; Zahm, Marilyn; Glendening, Dale; Brown, Mark A. ODAR St. Louis HO; Valentino, Peter; Fillion, Cheri L.; Clark, William; Martinelli, Peter; Sotolongo, Ariel; Stagno, Linda A.; Thompson, Edward L.; Loucas, Penny; Wolfe, Jeffrey ODAR Tulsa HO; Gaffaney, George; Benagh, Christine (Christine.Benagh@ssa.gov); Round, Edmund; Fier, Seymour; Hoppenfeld, Marilyn; Nisnewitz, David; Cofresi, Michael D.; Reeves, Martha R.; Weaver, Cynthia; Burgess, John R.; 'j.e.sullivan@dot.gov'; Ray, Thomas Mercer; Ayer, Francis; 'Swank.Drew.A - OALJ'; Armstrong, Paul R.; Gatewood, Tela L.; Deramus, Osly F.; Sifford, Bobbi; Daniels, Thomas; Northington, Maria; 'kdonahue@osc.gov'; 'dcash@osc.gov'; O'Carroll, Pat

Subject: REQUEST TO PUBLISH ON-LINE AMOUNTS OF FEES PAID BY SSA DIRECTLY TO REPRESENTATIVES (ATTORNEY & NON-ATTORNEY) IN THE SSDI & SSI PROGRAMS (FY 2008 - FY 2012)

Dear Acting COSS Colvin,

Please consider this a request for the Social Security Administration (SSA) to post on-line information related to the direct payments of fees by SSA to Social Security Disability Insurance (SSDI) and Supplement Security Income (SSI) representatives—both attorney and non-attorney--for Fiscal Years (FY) 2008 through 2012.

If the following specific information is available regarding the direct payment of representative fees FY 2008 through FY 2012, please state:

- (1) What percentage of total fees paid directly by SSA to representatives was solely for representation at the State Disability Determination Services (DDS) level (this is, DDS awarded disability benefits to the claimant),
- (2) What Office of Disability Adjudication & Review (ODAR) Hearing Office or DDS field office was involved in making the disability decision resulting in payment of claimant benefits and representative fees,
- (3) What percentage of SSA's direct payment of fees to representatives was based upon:
 - (a) Fee Agreements (25% of retroactive benefits awarded up to \$6,000 maximum), and
 - (b) Fee Petitions (25% of retroactive benefits awarded with no maximum).

It should be noted that the retroactive benefit calculation includes all collateral benefits awarded to the claimant's spouse and children--not merely the claimant's retroactive benefits.

- (4) What amount of "reasonable attorney fees" did SSA pay attorneys from FY 2008 through FY 2012 based upon the *Equal Access to Justice Act (EAJA) (28 USC 2412)* when SSA voluntarily agreed to remand cases from federal district court for further administrative proceedings?

Attorneys receive an award of reasonable attorney fees at the federal district court level when SSA agrees to remand a case for further proceedings. The award of reasonable attorney fees is based upon the *Equal Access to Justice Act (EAJA) (28 USC 2412)*. 50% of appeals filed in federal district court are remanded for further proceedings by agreement with SSA--rather than SSA defending a decision in federal court denying benefits that typically has been reviewed twice at the DDS level, once by an administrative law judge (ALJ) after a hearing and finally by the Appeals Council (AC) which affirmed the ALJ decision and the DDS denial of benefits.

- (5) How much has SSA paid to reimburse representative travel expenses incurred to attend hearings from FY 2008 through FY 2012? Representative travel expense reimbursement is based upon *41 CFR Chapter 301; 20 CFR 404.999a – 999d; 20 CFR 404.938; 416.1438*.

On December 30, 2008, the Portland Oregonian first published administrative law judge (ALJ) statistical data on-line that the newspaper had obtained from SSA for the period 2005 to 2008. The Portland Oregonian pursued its Freedom of Information Act (FOIA) request for ALJ statistical data as a result of its attempt to determine the identity of a "billion dollar judge" the newspaper had heard rumors of. Since 2009, ALJ statistical data has been published on-line: http://mwww.ba.ssa.gov/appeals/DataSets/03_ALJ_Disposition_Data.html. The Portland Oregonian publication of ALJ statistical data on December 30, 2008 was the first time that the general public (and ALJs in general) became aware of the existence of "billion dollar judges" operating within the SSDI and SSI disability insurance programs.

The amounts of direct payment of fees by SSA to representatives from withheld retroactive claimant benefits, the amounts paid by SSA for *EAJA* awards and the amounts paid by SSA to reimburse representative travel expenses all involve expenditure of taxpayer funds. The general public is entitled to know this information. This is information that can be obtained pursuant to the *FOIA*. The rationale and reasons for releasing this information to the public would be the same as the rationale and reasons applied when SSA decided to release ALJ statistical data on-line.

Could you please have a member of your staff inform me whether SSA intends to post representative fee information on-line in the near future?

If SSA does not intend to do so, could a member of your staff please inform me of the rationale and reasons for SSA's decision not to do so.

Thank you.

LARRY J. BUTLER, ALJ
ODAR SATELLITE OFFICE
3650 COLONIAL BOULEVARD, SUITE 210
FORT MYERS, FL 33966-1157

TEL: 888-462-1109 X 15500
FAX: 239-278-0684 (OFFICE)
E-MAIL: Larry.J.Butler@ssa.gov