

The National Association of Disability Examiners

**Testimony Before the
Subcommittee on Social Security
Committee on Ways and Means
House of Representatives**

“Examining Changes to Social Security’s Disability Appeals Process.”

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Chairman Johnson, Ranking Member Larson and Members of the Subcommittee on Social Security, Committee on Ways and Means: The National Association of Disability Examiners (NADE) sincerely appreciates the opportunity to offer comment and insight regarding the Social Security Administration’s management of the federal disability programs. The stated purpose of this hearing is, *“Examining Changes to Social Security’s Disability Appeals Process.”* NADE believes the challenges facing this appeal step in the Social Security disability programs are numerous and we commend the Subcommittee for convening this hearing to explore them.

Who We Are

NADE is a professional association whose purpose is to promote the art and science of disability evaluation. The majority of our members work in the state Disability Determination Service (DDS) agencies where 15,000+ employees adjudicate claims for Social Security and/or Supplemental Security Income (SSI) disability benefits. Our members constitute the “front lines” of disability evaluation. Our membership also includes many SSA Central and Regional Office personnel, attorneys, physicians, non-attorney claimant representatives, and claimant advocates. The diversity of our membership, combined with our extensive program knowledge and “hands on” experience, enables NADE to offer a perspective on disability issues that is unique and which reflects a programmatic realism, which we believe, is a critical factor for Members of this Subcommittee to consider.

NADE members are deeply concerned about the integrity and efficiency of the Social Security and the SSI disability programs. Simply stated, we believe those who are entitled to disability benefits under the law should receive them; those who are not, should not. Many of the hearings held by this and other Congressional Committees and Subcommittees have, in recent years, focused on the challenges facing the Social Security disability program.

Program Scope

Perhaps no other governmental agency has a greater impact on the quality of life in America as the Social Security Administration (SSA) whose mission is: **“To promote the economic security of the nation’s people through compassionate and vigilant leadership in shaping and managing America’s social security programs.”** We believe many, if not most, Americans will judge the ability of their government to meet their quality of life needs almost solely by the service provided by SSA. Therefore, it is imperative the services provided by SSA fulfill expectations of timeliness and quality. This includes the administration of the Social Security and SSI disability programs.

During FY 2017, SSA paid approximately \$935 billion to nearly 61 million Social Security beneficiaries. SSA paid an additional \$54 billion in benefits to about 8 million SSI (Supplemental Security Income) recipients. When FY 2018 data is made available in a few weeks, it is expected the numbers will show even larger payouts and a larger number of recipients. This is the program scope for the Social Security Administration – a realization of annual payouts from these two programs of nearly **\$1 trillion to nearly 70 million beneficiaries!**

Every month, an average of 9 million workers and an additional 2 million dependents receive Social Security disability benefits from SSA. Every month an average of 6 million blind and disabled adults and more than 1 million blind and disabled children receive SSI disability benefits. That totals approximately 18 million people who rely on some form of disability benefit administered by the Social Security Administration. The enormity of these programs, and their impact on the lives of Americans, cannot be understated. Actuaries forecast that 1 in 4 workers, currently age 20, will become disabled prior to attainment of their expected retirement age. Among this group, 67% will have no private disability insurance and will depend on SSA as their only source of income. While some beneficiaries will collect disability for only a few years, others will collect benefits for much longer periods, making it imperative that the determination of who is eligible for these benefits be accurate.

The DDS Role in the Federal-State Partnership

Initial and reconsideration (first level appeal) claims for disability benefits are processed in the states by Disability Determination Services (DDSs). These are state agencies working in partnership with SSA to provide public service to individuals applying for disability benefits. The DDSs share a tremendous responsibility to help ensure the integrity of the disability program. Eligibility for disability benefits is difficult and determining eligibility for benefits is an equally difficult and complex task. The DDSs make complex medical determinations for the Social Security disability programs pursuant to Federal laws and regulations. The vast majority of DDS personnel are state employees subject to their individual state rules and mandates, personnel practices and other issues specific to their respective states. Within this climate of the federal-state partnership, the DDSs adjudicate disability claims at the initial, reconsideration, continuing disability review (CDR) and disability hearing levels.

The adjudication of claims for disability benefits must adhere to SSA's stringent definition of disability. This is defined as:

➤ **Definition of disability for adults**

Under title II and title XVI, we consider a person disabled under Social Security rules if he or she has a medically determinable physical or mental impairment (or combination of impairments):

- that prevents him or her from doing any substantial gainful activity (SGA), and
- has lasted or is expected to last for a continuous period of at least 12 months, or is expected to result in death.

NOTE: The definition of disability also applies to persons applying for child's insurance benefits based on disability before age 22 and for disability benefits payable after December 1990 as a widow(er) or surviving divorced spouse.

➤ **Definition of disability for children under age 18**

Under title XVI, we consider a child under age 18 disabled under Social Security rules if:

- the child has a medically determinable physical or mental impairment (or combination of impairments) that:
 - causes marked and severe functional limitations;
 - has lasted or is expected to last for a continuous period of at least 12 months, or is expected to result in death; and
- the child is not doing any SGA.

At the initial and reconsideration levels, disability adjudicators follow a 5-point Sequential Evaluation approach that requires a determination be made at each step before the adjudicator can proceed to the next step.

Since the introduction of the Social Security Administration's Disability Insurance Program in 1956, the disability claims adjudication process has been a Federal-State venture. In the DDSs, an adjudicative team composed of a Disability Examiner (generic title) and/or a Medical Consultant and/or a Psychological Consultant in the DDSs make the initial medical-legal-vocational determination. That initial or reconsideration determination must follow complex and frequently changing Federal rules and regulations and it is essential that those making the determinations possess unique and specific knowledge, skills, and abilities in order to fairly and timely administer the programs.

The Social Security definition of disability differs markedly from any other public or private industry definitions of disability. While other disability programs focus primarily, or even exclusively, on the degree of impairment, the Social Security and SSI adult disability programs are work and function oriented. The SSI child disability program is also function oriented.

What this means is that an impairment is considered to be disabling only if it prevents an adult individual from working or a child from functioning in normal age-appropriate activities. The DDS adjudicative team is required, as a matter of routine, to deal with the interplay of abstract medical, legal, functional and vocational concepts.

In FY 2017, DDSs adjudicated over 2.5 million initial claims and about 600,000 reconsideration claims. DDSs also processed about 800,000 continuing disability review (CDR) claims. Similar numbers are expected to be reported for FY 2018. The DDS allowance rate was 33% at the initial level and 12% at the reconsideration level. The allowance decisions made by the DDSs account for nearly 77% of all allowances made in FY 2017 and the DDSs were able to achieve this level of service while maintaining an initial accuracy rate of 95%, including an allowance accuracy rate of 98.7%! DDS average processing time for an initial claim in FY 2016 was 85.6 days. Reconsideration claims were processed in 77.1 days. Quick Disability Determination (QDD) and Compassionate Allowance (CAL) claims had an average processing time of just 18.5 days! The ability of the DDSs to adjudicate these cases timely and accurately carries enormous consequences for SSA and the citizens who rely upon the Agency for assistance. Therefore, it is extremely critical the individuals tasked with this responsibility be highly trained and able to perform their job duties in a professional environment. The DDS adjudicators must be able to translate the medical concept of clinical severity into the legal concept of Social Security disability program severity and the resultant functional restrictions into vocational and/or age-appropriate assessments. In essence, the DDS adjudicators must appropriately and interchangeably, apply the “logic” of a doctor, a lawyer and a rehabilitation counselor (for a description of the job of the Disability Examiner as defined by NADE in 2004, please refer to <https://www.nade.org/nade-board-approves-disability-examiner-position-paper/>).

Focus of Hearing and Statutory Requirement for Reconsideration

The statutory requirement for reconsideration is codified in the SSRs in Social Security Act – Section 205(b)(2); Regulations – 20 CFR 404.901, 404.907 – 404.922, 416.1401, 416.1407-416.1413b, 416.1414-416.1422 and in POMS DI 27001.001.

These regulations specify that reconsideration is the first step in the appeals process for a claimant who is dissatisfied with the initial determination on his or her claim, or for individuals (e.g. auxiliary claimants) who show that their rights are adversely affected by the initial determination. A reconsideration involves a thorough review of all evidence from the initial determination and any new evidence that is obtained at reconsideration. A reconsidered determination is made by:

- An adjudicative team consisting of a disability examiner and a medical consultant or psychological consultant; or
- A disability hearing officer.

The medical or psychological consultant person(s) who makes the reconsidered determination must be a different decision maker than the initial level medical or psychological consultant.

It is important to note that, while the bulk of reconsideration claims include those claims denied at the initial level, some reconsideration claims involve initial allowances where the claimant is appealing the established onset date (EOD).

The Current State of Reconsideration As Viewed By NADE

Reconsideration is available to claimants who are dissatisfied with the initial determination made on their claim. At least this is the first level of appeal in most of the country. Since 1997, ten DDSs have been without the reconsideration appeal step. In an attempt to redesign the disability claims process, SSA launched what it called a Prototype model in 1997. Ten (10) DDSs were selected for inclusion in this model that featured the elimination of the reconsideration appeal step and introduced the concept of the Single Decision-Maker or SDM (please refer to GAO's report, *"SSA Disability redesign: Actions Needed to Enhance Future Progress,"* HEHS-99, March 12, 1999 for a complete description of the various components of the Prototype model). The SDM component was expanded to ten additional DDSs in 1998. Almost immediately, however, many pieces of the Prototype model were proven to be ineffective or unworkable and were abandoned, leaving Single Decision-Maker (SDM) and elimination of reconsideration as the existing components still in place.

The SDM component remained in place until the Bipartisan Budget Act of 2015 mandated its elimination. Thus, the 20-year experiment for SDM came to an abrupt end in FY 2017. NADE believes this to be an unfortunate decision and we would be interested to view any statistical data compiled by SSA that would reflect the impact of the abolition of SDM on DDS allowance rates and quality. We believe SDM was a viable component that demonstrated Disability Examiners were sufficiently competent to make accurate and timely decisions on most initial disability claims, saving the input of the DDS Medical Consultants for the more complex claims.

The elimination of reconsideration in the ten DDSs in 1997 has continued to this day with the obvious effect that SSA has lacked a unified process for the administration of its disability programs for more than 20 years! NADE endorsed the early attempts by SSA to redesign the disability claims process as a necessary means to devise the most effective model of processing these claims in a timely and accurate manner. For over a decade, SSA has indicated its intent to re-introduce the reconsideration appeal step in those ten DDSs. For over a decade, one reason or another has prevented them from doing so. In recent months, SSA has announced its intent to move forward with a national roll-out to re-introduce reconsideration into those ten DDSs.

We have yet to see the data SSA collected during the past 20 years that would show the impact of what the elimination of the reconsideration appeal step had for those DDSs involved and we have yet to see SSA introduce any major changes that would redesign the reconsideration step as a more meaningful level of appeal. NADE believes reconsideration should be a true appeal step and not just another bureaucratic roadblock for individuals who seek assistance from SSA.

Need for a Unified Process

More than 80,000 claimants were allowed in FY 2017 at the reconsideration appeal step and we have previously recommended SSA should move forward to re-introduce this appeal step in the ten DDSs where it has been absent for over 20 years or abandon this appeal step in the other DDSs. NADE repeatedly presented the argument that disability decision-making should be the same across the nation. If 40 states had reconsideration, the remaining 10 states should also have reconsideration. If the absence of reconsideration proved effective in 10 states, then the other 40 states should follow. Regardless of what direction the data suggests to be the most viable model, that model should be adopted nation-wide.

NADE has remained firm in its support that SSA should utilize the data collected over the past 20+ years to determine:

- If the reconsideration appeal step is an effective model, and
- What the future model of reconsideration should look like

In recent years, NADE has polled its membership twice to solicit input regarding reconsideration and whether our members supported maintaining this appeal step. The results led the NADE leadership to conclude our organization could not take a definitive position on reconsideration. Our members were evenly divided in their support for, and opposition against, maintaining the reconsideration as a viable appeal step. However, when asked if they would support a more enhanced reconsideration appeal step, the level of support within our membership soared with the vast majority signaling strong support for an enhanced reconsideration as a true appeal.

NADE was hopeful to review data collected by SSA during the 20+ year experiment in which reconsideration was not part of the disability claims process in ten states but it appears there is little reliable data available. That is an unfortunate outcome from such a lengthy test model.

Future of Reconsideration

The reconsideration appeal step has had a long and somewhat colorful history. SSA has made multiple attempts since the 1970's to redesign this appeal step. Yet, because of poor design choices, lack of adequate funding or any other of a multitude of reasons, the many attempts made between 1971 and today have produced little meaningful reform and the original design of reconsideration has changed little in 60 years. Today, reconsideration remains mostly a second case review only scenario with limited claimant contact that is widely perceived as producing a rubber stamp of the initial decision.

NADE believes there is a future for an enhanced reconsideration appeal step and we offer the expertise of our membership in any effort to redesign reconsideration to ensure that the rights

of those who seek assistance are protected and that the definition of disability, as written into the Social Security Act, is not compromised. We offer the following examples as suggestions on where to start with redesigning reconsideration:

1. SSA has put into place a special federal review of DDS disability decisions that target reconsideration determinations made on claimants age 55 and over. The purpose of this Targeted Denial Review (TDR) is an effort by the Agency to take a third look at those claims SSA has determined are likely to be approved at the Administrative Law Judge level and return those claims to the DDS for either additional development or an outright reversal of the denial decision. This Targeted Denial Review is based on a predictive computer model that the DDSs have consistently asked to see but which SSA has refused to share. Instead of working collaboratively with the DDSs, the Agency apparently prefers to take the “gotcha” approach and then claim credit for a substantial reversal rate for these special reviews. NADE believes that a more collaborative effort could ensure reconsideration determinations made at the DDS level are accurate and timely without the need for such special reviews.
2. SSA could effectively enhance the reconsideration step by providing specialized training for Disability Adjudicators in the DDSs who make these determinations to consider other facts and evidence in making these determinations and how to better understand the interaction of many different medical conditions and their impact on claimant function. In some situations where it could be considered pivotal, the claimant could be offered the opportunity for an informal conference, either in person or via telephone contact, in which the claimant could be allowed to submit additional facts or evidence they wish to have considered prior to the final reconsideration determination. NADE does caution, however, that the problem of high DDS caseloads will have to be addressed if this is to be presented as a viable option for reconsideration.
3. SSA currently utilizes Disability Hearing Officers (DHOs) to handle appeals of Continuing Disability Review (CDR) claims when the DDS has proposed a decision to cease benefits. If the claimant chooses to appeal the decision, the claim is returned to the DDS as a reconsideration CDR claim. If the new Disability Adjudicator concurs with the cessation decision, the claim is forwarded to the DHO. The DHO will conduct an independent case review and offer the claimant the option for a hearing at which the claimant can present witnesses and other evidence to support their claim. A similar option may represent a potential model for an enhanced reconsideration appeal step for initial claims.

We believe there are other options to enhance the reconsideration appeal step and we offer the expertise of our membership to engage in a national dialogue to explore these options to determine how best to design the reconsideration appeal step or, failing in that effort, how best to abandon this appeal step. Exploratory models, such as those we have recommended, could be piloted on a limited basis with specific parameters prescribed for the collection of valid data that can then be analyzed and used to determine if any such models have merit.

Reduced Budgets and Insufficient Funding

There are many challenges to ensuring that disability determinations are accurate and made in a timely manner, regardless of whether those determinations are made at the initial level or at the reconsideration level. No challenge is currently more important to DDSs than insufficient funding and the lack of hiring authority to address critical staff shortages. NADE is aware that there are many problems that can't be solved by throwing more money at the problem but, in the case of timely and accurate decision-making in the disability program, the lack of sufficient funding on a consistent basis has created a crisis of service delivery in the DDSs. Attrition rates in the DDSs have soared in the past few years and many DDSs report they are currently operating with one-third less staff than they had three years ago. This staffing shortage has led to extremely high caseloads that can subsequently contribute to increased processing times and diminished accuracy in decision-making at both the initial and reconsideration levels.

It is in this environment that SSA has announced its decision to re-introduce reconsideration to those 10 DDSs and to allocate much of the new hiring authority granted under the FY 2018 budget to those DDSs. NADE readily acknowledges the need for such hiring if SSA proceeds with the re-introduction of reconsideration but we believe the timing of this action is poor. The vast majority of DDSs throughout the country are struggling to keep sufficient staff to do the work required and many DDSs have to utilize staff in other DDSs and federal components to process claims. The DDSs have had to shift personnel and resources from such positions in the DDS as training, quality assurance, professional relations, and even supervision and management and direct all their resources to claim processing to ensure that the claims continue to be processed timely and accurately. This shift of resources within the DDSs cannot be sustained on a continuing basis without severe risk to decisional accuracy and timeliness and the performance of other functions within the DDS that are being delayed in order to maintain sufficient resources to process claims.

The investment in time and resources to train a disability adjudicator to the level at which they become proficient in disability decision-making is significant and the DDSs cannot afford to allow this commitment of resources to continue to walk out the door. As caseloads soar in the DDSs, more and more staff look for other jobs and the staffing shortages increase. The resulting work environment within the DDSs can become toxic as remaining staff have to process almost unimaginable workloads. The DDSs lost 1,623 employees in FY 2017, including 1238 adjudicators. The attrition for FY 2018 will be similar. It takes two to three years for a disability adjudicator to become proficient at making accurate and timely disability determinations. The DDSs cannot afford to expend the funds to train these adjudicators only to watch them walk out the door for higher paying, less stressful jobs in the private sector. It is imperative that SSA recognize this critical need in the DDSs and grant them the necessary hiring authority to fill vacant staff positions. If necessary, SSA should delay its roll-out of reconsideration until such time that the Agency has a more favorable budget outlook.

Summary

NADE believes SSA's ability to provide timely customer service is critical. **SSA is America's "Window" to its government** and it can ill afford to fail in its mission. Social Security can and must do better in fulfilling its promise to America and that includes the administration of its disability programs. People with disabilities, already burdened by the challenges of their illness/injury, are often in desperate need of benefits to replace lost income. They deserve, and should receive, timely and accurate decisions through a fair and understandable process. The challenge to SSA and its DDS partners is to ensure the disability determination claims process, including the appeals process and, specifically the reconsideration step, fulfills its mission.

SSA administers disability programs that pay nearly \$1 trillion annually to 70 million Americans, including nearly 18 million blind and disabled adults and children. Decisions regarding eligibility for disability benefits are made in the DDSs as part of the federal-state partnership and the first level of appealed decisions, called reconsideration, are also made at the DDS. The DDSs process millions of claims annually with high accuracy and in a timely manner and nearly 77% of all allowance decisions for disability benefits are made by the DDS. Yet, the public perception continues to exist that reconsideration is a meaningless bureaucratic roadblock that only delays disabled individuals from obtaining their allowance decision at the next appellate level. For many decades, SSA has explored different designs for reconsideration but has continued to fall back on "The Old Reliable Model."

The Agency has announced plans to re-introduce this appeal step in ten DDSs where it has been absent for decades. This will require a significant investment of resources and comes at a time when other DDSs face increased attrition and critical staffing shortages that have endangered their ability to complete their work in a timely and accurate manner.

NADE supports a unified process where all disability claims are handled similarly and the appeals process is the same. However, we question if this is the most appropriate time for SSA to attempt to re-introduce the reconsideration appeal step in the ten states where it has been absent for over 20 years. We believe SSA and the DDSs have more critical needs for the limited funds available from the Agency's administrative budget and we believe SSA should consider waiting until such time that there are sufficient funds available for this purpose. We also believe the re-introduction of this appeal step should coincide with a national introduction of a newly designed reconsideration model that would alter the public's perception that reconsideration is a rubber stamp for the initial decision. NADE supports an enhanced reconsideration as a more effective and more efficient appeal step and we stand ready, willing and able to assist SSA and other interested stakeholders with this endeavor.

We commend the Subcommittee for exercising its oversight authority and we look forward to working with the Subcommittee to achieve the goals we have outlined.