



COALITION ON HUMAN NEEDS

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January 31, 2020

Commissioner Andrew Saul
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted via www.regulations.gov

Re: Notice of Proposed Rulemaking on Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 36588 (November 18, 2019), Docket No. SSA-2018-0026

Dear Commissioner Saul:

On behalf of the Coalition on Human Needs (CHN), thank you for the opportunity to comment on this proposed rule making changes in the frequency, notice, and character of Continuing Disability Reviews (CDRs) for claimants and recipients of Social Security Disability Insurance (SSDI).

The [Coalition on Human Needs](http://www.chn.org) is an independent advocacy organization concerned with meeting the needs of low-income and vulnerable people through effective federal programs and policies. We are an alliance of more than one hundred national-scope organizations, including human service providers, faith-based, labor, and civil rights groups, policy experts and other advocacy groups. Since our founding in 1981, our members have understood that Social Security provides essential support to people with disabilities through SSDI and Supplemental Security Income (SSI). Our members have seen the significant harm done to hundreds of thousands of people with serious health conditions when the Reagan Administration attempted to implement a similar increase in disability reviews. Hundreds of thousands of people were denied benefits; after lengthy appeals, about two-thirds were reinstated. Responding to widespread outrage and bipartisan opposition, the Reagan Administration abandoned its stepped-up reviews, but not before months of hardship.

It is very difficult for CHN to understand why, in light of this painful history, the Social Security Administration would seek to try again to increase the frequency of Continuing Disability Reviews. We strongly urge you to withdraw this proposed rule.

The Social Security Administration is proposing to greatly increase the number and frequency of disability reviews it completes on people who have been approved for Social Security Disability benefits

(adding 2.6 million reviews over 10 years). More Continuing Disability Reviews, (CDRs) mean more terminations. To quote expert comments submitted to SSA:

“To the extent that CDRs remove people from the disability rolls, this is often because their impairments make it difficult for them to understand and comply with the CDR process, not because their impairments have improved in a way that dictates cessation.”

-- National Organization of Social Security Claimants' Representatives (NOSSCR)

The rule would require millions of people with serious health conditions to undergo more frequent reviews of their medical conditions, but there is no evidence that conditions will have improved enough to allow them to work with adequate earnings.

The point of disability reviews is to determine whether adults' conditions have improved to the extent that they can be gainfully employed, or to determine whether children's conditions have improved so that they are no longer considered to have marked and severe functional impairments. SSA has provided no evidence that the more frequent reviews would find improvements warranting termination. In 2018, the Social Security Administration (SSA) initiated 1.3 million disability reviews for people receiving Social Security Disability benefits. During the same year, only 45,285 disabled workers were terminated because of medical improvements. If these denials follow the pattern of previous years, the vast majority will be overturned during various stages of appeal.

People with serious conditions will lose assistance because of the difficulty of complying with all the review requirements, not because their health has significantly improved.

The Continuing Disability Review (CDR) form is 15 pages long, written on a grade 7.4 level. Beneficiaries must write short essays. They must list their medical providers with contact information, list all medications, tests, their education or vocational rehabilitation. They may have to pay to include copies of medical records and frequently must make additional appointments with medical providers for them to complete paperwork. This will be especially difficult for people whose conditions limit their mobility. Beneficiaries with limited intellectual capacity or little education are especially likely to need help in filling out the forms and going to appeals. They only have 10 days to request continuation of benefits while the review process is proceeding. If they miss that deadline they will go without benefits for months or years. Without an expert guide to assist in navigating the requirements, many people with disabilities (or parents of children with disabilities) find it difficult to comply with every step. Such guidance costs money, and many people with disabilities do not have it.

Further, SSA notes that it utilizes multiple data systems, and it is not infrequent that correct addresses for beneficiaries or claimants are not maintained in all systems. Therefore, some people may not even receive a notice that they must comply with the review process. When they fail to respond, they are categorized as “failing to cooperate,” and will be terminated. Others may receive notifications but are unable to get to physicians' offices or other sites to pick up required documentation. Medical offices frequently charge for copies of medical records, and low-income people with serious health conditions may not be able to afford those charges.

The number of people who lose benefits because they do not return all the required forms has been increasing. In 2013, the number losing benefits for this reason was 2,256; that had jumped to 9,956 three years later, or 5.1 percent of all CDR terminations.

The vast majority of people whose benefits are terminated do not go back to gainful or steady work.

The proposed rule itself cites research showing that only 22 percent of people whose benefits were terminated returned to work at even modest earnings during the first three years after loss of benefits. [Additional research](#) by SSA staff found that when benefits were terminated on grounds of medical improvement, in the five years after termination only 20 percent earned more than the modest “substantial gainful employment” standard over the full five years. Nearly two-thirds (63 percent) endured at least one year with no earnings.

Instead of citing credible evidence that people’s conditions are improving so that gainful employment is possible, this proposed rule is willing to increase the number of disability reviews by a stunning 2.6 million over the next decade because of its guess that more people will go to work. As the proposed rule states: “We believe that there may be positive employment effects as a result of these proposed rules, although we cannot currently quantify them.”

The experience during the 1980s of terminating hundreds of thousands of SSDI beneficiaries provides evidence that large numbers of people losing benefits are unable to sustain gainful employment. According to a [GAO report](#) published in 1989, 58 percent of applicants who were denied benefits in 1984 and were not receiving them three years later were not working. Seventy-one percent of the group that had been denied SSDI and were not working were classified as having severe functional limitations

Over two-thirds of those who had been denied benefits had been jobless for at least three years. Of those who were working, over 40 percent were earning less in 1986 than they were before they had applied for benefits. This is a key point: while people do their best to work, it is very uncommon for them to earn enough to make ends meet. Without adequate income, people’s health conditions are likely to deteriorate, because of poor nutrition, too little heat or cooling, apartments with mold or other unsafe conditions, and lack of access to medical care.

The proposed rule does not take into account research that shows that older age and time outside the workforce make it far less likely that someone will return to gainful employment. In fact, the rule would not allow age and time away from work to be considered in determining whether people with cancer, diabetes, or stroke will be eligible for Social Security Disability benefits.

Similarly, the proposed rule does not adequately consider the ways multiple impairments can make it more difficult to show improvement.

Evidence has been shown to SSA that the unfortunate combinations of heart disease and stroke or diabetes and depression and anxiety, to name two examples, make it even less likely that there will be a successful return to the workplace. The rule does not allow consideration of the combined impact of those conditions.

Imposing such hardships on people with health conditions on such a casual basis is certainly arbitrary and capricious and would not pass the standards of the Administrative Procedure Act.

Children with disabilities will be more likely to be terminated under this proposal.

More children with disabling conditions due to low birth weight will have reviews required at age 1 (reviews now not required if medical improvement was judged unlikely). There will also be automatic reviews at age 6 and 12, even in cases where the medical condition is unlikely to show improvement. The proposed rule suggests that when children are terminated early, parents are more likely to return to employment, without citing evidence that this would occur. This change in requirements for children is contrary to the intent of Congress when it enacted the Balanced Budget Act of 1997 and called for scheduling reviews later than age one if medical improvement is not considered likely.

The new proposed category for disability reviews (Medical Improvement Likely) does not make clear what conditions will be included or how frequently the reviews should be conducted.

Here too, the rule is impermissibly arbitrary and vague in creating this new category, and on this basis should be withdrawn.

The proposed rule will cause even more delays in processing applications or reviewing continued eligibility.

In October of 2019 there was a backlog of at least 14,792 pending CDRs. Adding 2.6 million reviews will make the backlog much worse. For new applicants, qualifying for benefits can take years.

[The Center on Budget and Policy Priorities](#) cites many highly troubling instances of people with serious medical conditions having to wait years for their applications to be considered. For example, in California, the [Orange County Register](#) profiled a 62-year-old disabled worker who paid into Social Security since he was 15; six years after a catastrophic workplace accident and after exhausting his employer's disability benefits, he was still awaiting a decision. An Ohio woman with 35 years of uninterrupted employment had already waited for two years for a final decision and was judged likely have to wait another year, according to the [Cleveland Plain Dealer](#). DI beneficiaries have [extensive work histories](#): the average beneficiary has 22 years of work experience, and those disabled at age 50 or later average more than 30 years of work.

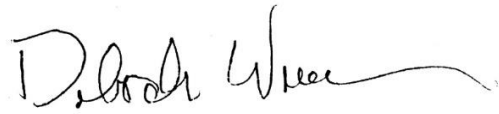
The proposal says it will cost \$1.8 billion over 10 years to process the additional reviews. Although it does not estimate how many people will be terminated, it estimates \$2.6 billion in savings. But this does not take into account higher costs for SNAP, Medicaid, SSI, homelessness or other assistance for people impoverished by the loss of Social Security Disability or SSI.

It would be far more useful to invest \$1.8 billion in fixing the currently overburdened system, rather than to increase the burdens by adding millions of reviews with no evidence they will have a beneficial effect.

Thousands of people die waiting for an SSA decision about their eligibility; among those who were terminated during the Reagan years, more than 20,000 died. We do not dispute that many of these very

ill people would have died even if they continued to receive SSDI benefits. The point is that they were among the many beneficiaries who are terribly ill and who have no realistic prospects for work. It is extremely disappointing that the Social Security Administration would go back to the failed approach of setting up even more roadblocks for continued receipt of benefits, knowing from past experience that the consequences will be devastating. Based on past experience, a million people could be subjected to termination of benefits, despite their years of work and failing health. Please – do not inflict this unnecessary, predictable harm. We strongly urge you to withdraw this rule.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Deborah Weinstein", with a long, sweeping horizontal line extending to the right.

Deborah Weinstein
Executive Director