

**“The Social Security Administration’s New Initial
Disability Determination Rules: Will Quick Disability
Determinations Improve Efficiency and Equity?”**

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INTRODUCTION

Since the inception of Social Security Disability Insurance in the 1950s, Congress and the Social Security Administration (SSA) have attempted to improve the speed of disability determinations balanced by the demands of cost containment, accuracy, and equity. Efficient and fair handling of the 2.6 million claims for disability benefits received each year is a daunting task. Delays ranging from several months to years had become commonplace. Marked variances in disability application outcomes between states and regions had brought the fairness of the process into question. Congressional and Administration policy-makers heard an increasing number of demands for reform from claimants and advocacy groups for the disabled. Of particular concern has been the inability of the initial application procedure to speedily identify the most severely and obviously disabled claimants so that they could receive benefits in a timely manner.

In 2006, the SSA promulgated extensive new rules which significantly changed the entire disability application and appeals process. These changes included new systems for the initial determination of eligibility for disability status and supplemental income. Particularly innovative was the implementation of computerized identification of the potentially most disabled claimants through Quick Disability Determinations (QDDs)

Legislative History

Federal law concerning disability is rooted in the Social Security Act of 1935 (Social Security Act) which initially only covered the aged and the blind. Congress was tempted to include disability as a federal program in 1935, but was paralyzed by two opposing impulses: the desire to help those unable to work because of injury or illness versus the fear of making citizens dependent on government handouts. This has been the ongoing legislative dynamic of federal disability statutes for the last 72 years (Bloch, 2007). Congress has clearly recognized the plight of disabled citizens. But Congress has also been concerned about the financial costs of the program, administrative complexities, and that disability benefits could weaken the American work ethic. The inherent subjectivity of determining when disability exists presented Congress with the specter of an entitlement program that could produce a flood of disability recipients or lengthy adjudications when disability status was denied.

Congressional action on a disability program was delayed for 20 years as the Social Security Board (the predecessor of the Social Security Administration) struggled with the concept of how to best determine who was unable to work. At the urging of President Truman, Congress modified the Social Security Act in 1950 to include federal administration and funding of disability.

Since the inception of Social Security Disability Insurance (SSDI), Congress has purposefully focused on a medical model of disability because “Congress has wanted to limit the program by requiring that the reason for work limitations be identified as medical” (IOM, 2007, p. 26). The initial definition of disability chosen was modeled on

the War Risk Insurance Act, a Veterans Administration program (IOM, 2007, p. 48). As incorporated in the Social Security Act of 1954, disability was defined as:

“Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration” (IOM, 2007, p. 48).

President Eisenhower signed into law the amendments to the Social Security Act on August 1, 1956 that created the Social Security Disability Insurance program (Social Security Online, July 1, 2007). Additional legislation, added in a piecemeal fashion from the 1950s through the 1970s, further defined disability and expanded the breath and depth of the program. Originally covering workers between the age of 50 and 65, and their dependent children, it was expanded to all non-disabled dependents of disabled workers. In 1960, the age range was expanded to include workers between the ages of 18 and 65. Several years later, Congress changed the duration of disability requirement from the poorly defined ”long-continued and indefinite” to 12 months. A series of judicial decisions in the mid 1960s prodded Congress to more clearly define jobs that a denied applicant might qualify for. A disabled person would now have to show that his:

“physical or mental impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work, which exists in the nation economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he could be hired if he applied for work (IOM, 2007, p. 48-49)”

The medical model of disability was further emphasized in a 1967 amendment that defined disability as “an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques (IOM, 2007, p. 49).”

In 1972, Congress authorized the Supplemental Security Income (SSI) program. Whereas recipients of SSDI must have previously worked and paid a defined amount of security tax, SSI became available to all disabled children and adults with limited financial resources.

Disability benefits have generally expanded from the 1950s to the 1970s. When Republicans gained legislative majorities in the 1990’s, Congress scaled back some disability benefits (Bloch, 2007). Congress has regularly stepped in over the last 50 years when constituents’ needs were not being adequately met, and used congressional hearings, and statutory changes, to give SSA more specific directives.

Administrative History

The Social Security Disability Insurance program is complex, involves a significant amount of technical expertise, and involves politically charged decisions that personally impact the lives of individual citizens. Congress has supplied the SSA with considerable discretion in setting rules and designing adjudicatory processes.

The administrators of Social Security have struggled for 80 years on how to precisely define disability. In the late 1940s it became apparent to the SSA that disability insurance was coming and that the complexities of administering such a program would need to be developed in advance. The Social Security Board “early on...decided that the

definition of disability for any disability benefit program had to be a strict one to be politically acceptable and financially feasible” (IOM, 2007, p. 48).” The Board also realized that the definition would need some elasticity, would be inherently imprecise, and that an inflexible definition would result in political pressure from potential recipients for a less strict definition, and a resultant escalation of costs.

The Listings

The SSA’s first experience with disability administration occurred during World War II when executive action established the Civilian War Benefit (CWB), which covered civilians injured in the war effort. The CWB established a list of five conditions that would result in automatic determination of need for permanent benefits and developed a rating system covering 6 body systems. In 1954, SSA’s 15-member advisory panel:

“recommended the issuance of evaluation guides and standards setting forth medical criteria for the evaluation of specific impairments with the degree of severity prescribed for each. The panel also suggested that factors such as age, education, training and experience may be important in the evaluation of disability, even though the law at that time did not specifically require consideration of these factors” (IOM, 2007, p. 71).

These criteria would later be known as the “Listings of Impairments.” The advisory panel expected that “85 to 90 percent” of disability applicants would fall immediately into one of the Listings, which would result in a rapid and simple disability determination. It was thought that only 10% of applicant would need a more lengthy and

costly individual adjudication. The Listings were “to allow leeway for professional judgment” and “were not to be applied mechanically” (IOM, 2007, pp 71-72).

Ease of administrative feasibility and program cost containment were the driving philosophy of SSA’s early efforts to define disability. The first Listings, devised in 1955, were relatively simple and brief. Organized around body systems, there were 10 categories “which focused more on the clinical criteria for the diagnoses than functional consequences” of the impairment (IOM, 2007, p. 72). Described as the “key to the bank” (IOM, 2007, p. 73), and existing only as internal agency operating instructions, the initial Listings were not publicly available because of concerns that medical reports would be tailored to fit the definitions. By the time the Freedom of Information Act required their publication in 1968, and as administrative experience grew, the Listings had expanded considerably. The specific details of signs, symptoms, and laboratory tests had become much more specific and now functional outcomes were being considered.

With the inception of the SSI program in the 1970s, Listings pertinent to the disabilities of children were developed. The adult listings were completely redesigned in 1979. Congress also directed the SSA to revise its mental disorder listings and a complete revamping of all the other body systems was undertaken shortly thereafter. No comprehensive overhaul of the Listings has been done since 1985. SSA has instead focused on revising single body system criteria, one-at-a-time, every few years. The rate of Listings revisions slowed in the 1990s because of staff shortages and lack of adequate research. The Clinton Administration’s New Public Management emphasis focused on disability process redesign and drove for business-like government operations (IOM,

2007, p. 75). Starting in 1999, reevaluations of the Listings became more frequent, with one or two body system revamped every year since.

The Disability Determination Process

Initial applications for SSDI benefits are received at one of the SSA's 1,138 field offices or 35 telephone service centers (IOM, 2007, pp 49-50). Information about the claimant's disability, medical records, age, work history and education/training are gathered and the field office determines whether the individual is eligible for benefits. The claim is then sent to one of the 54 federally funded State Disability Determination Services (DDSs), which are responsible for initial determination.

Prior to 2008, the initial determinations were done by adjudication teams, which usually consisted of two persons: a medical or psychological consultant plus a lay disability examiner. The adjudicators requested additional medical records or asked for consultations from local consultants. The DDS then returned the file to the field office, approving or disapproving the claim. The field office would either initiate the process for benefit payments or retrain the records of a denied claimant in case the decision was appealed.

A denied claimant could initiate an appeal of the denial anytime within 60 days (IOM, 2007, pp 50-51). This reconsideration was sent to a different adjudicative team at the State DDS office and the original medical evidence was reexamined. If the claim was again denied, the applicant could request a hearing with one of the 1100 federally appointed administrative law judges (ALJs) distributed across 144 offices. The claimant could appear at the hearing, bring representation, present witnesses, and submit additional

statements or medical evidence not available for the initial review and reconsideration processes. The ALJs could ask for additional witnesses, including testimony of consultants. If again denied, a final administrative appeal of the ALJ ruling could be requested of the SSA's Appeals Council, a panel consisting of administrative appeal judges (AAJs). If the claimant was unsuccessful in this four step administrative review process, he could file a civil lawsuit in federal district court.

In 2006, for every 100 disability claims filed, about 52 were granted benefits in the administrative review process. Approximately 36 of the unsuccessful claimants were granted benefits on initial review. Twenty-two of the denied claimants proceeded with administrative appeals with 3 successful on reconsideration, 12 by ruling from an ALJ, and 1 through the Appeals Council (IOM, 2007, p 51).

Problems with the Previous Determination Process

In 2003, the Government Accounting Office (GAO) cited federal disability programs, administered through the SSA and the Department of Veterans Affairs, as "high risk government programs," raising questions of "fairness, integrity, and cost" (IOM, 2007, pp 57-58). Of particular concern were the high rates of reversal on appeal, the long duration of the process, and variability in decision making.

In 2006, the average time for initial determination was 88 days, about 90 days for reconsideration, 483 days for the hearing process, and 203 days to get through the Appeals Council (IOM, 2007, p 58). Although only 4 percent of initial claims required review by the Appeals Council, these claims took as long as 1049 days to complete this fourth level of appeal. A major component of this excessive processing time has been a

rapid rise in the number of applications for disability, increasing from approximately 300,000 claims in 1989 to 635,000 in 2004 (IOM, 2007, p 58). In that same period, backlog at the ALJ level increased over three fold. Although the initial backlog decreased by 11 percent between 2004 and 2006, the claims reaching an ALJ increased by 13 percent.

Subjectivity has plagued the SSDI and SSI disability determination process. There have been striking variances in rates of approvals and denials between different DDS offices, SSA regions, and federal district courts. Differing decisions outcomes among the State DDS offices have caused GAO to question the fairness of the SSA's determination process. In 2004, Mississippi and Tennessee granted 25 percent of initial claims versus 50 percent in Hawaii, New Jersey, and New Hampshire. The states of New York, Vermont, and Minnesota awarded benefits because the claimant meet Listings criteria in less than 35 percent of cases, whereas North Dakota made an allowance based on Listings criteria 65 percent of the time (IOM, 2007, p 59). Making an allowance because impairment met a "Listing equivalent" occurred 2-3 percent of the time in Indiana and Washington, but 21 percent of the time in Vermont. Eighty-six percent of North Dakota's allowances involved mental illness: only 36 percent of North Carolina's were based on mental health impairment (IOM, 2007, p 60).

Other areas of state-to-state variation include percentage of cases requiring consultative exams (range 14 to 60 percent) and a variance of 50 to 80 percent in the number of cases allowed on ALJ appeal (IOM, 2007, p. 60).

Causes for variance in disability determination outcomes are numerous. States establish their own educational requirements for examiners, and vary considerable in

salaries and benefits offered examiners and fee schedules for consultants and testing. State DDS offices have differing training processes and establish their own internal quality processes. While many states have a wide variety of medical, surgical, and mental health specialists available for consultation, others do not have consultants in key medical and surgical specialties including cardiology, neurology, and orthopedics. The Social Security Advisory Board has identified several factors that produce variances in state-to-state decisions making (See Appendix A).

Proposals for Change

In 2001, the SSA thoroughly investigated its application process (Administrative Review Process...Proposed). SSA documented that initial evaluations at the state level took an average of 3.5 months and “an average of 1153 days to pursue a disability claim through all stages of review to obtain a final Agency decision” (Administrative Review Process...Proposed, p. 43591). Only 7 of these 1153 days involved actual working on the claim, while 525 of these days were attributed to problems with backlog. The agency processed 2.5 million applications for SSDI and SSI in 2005 and anticipated continued geometric rise in applications accompanied by increased case complexity. In the spring of 2002, President Bush meeting with the commissioner of SSA, asked why determinations took so long, particularly determinations involving applicants who were obviously disabled.

On July 27, 2005, the SSA announced a proposal to amend their administrative review process for determination of eligibility of benefits for Social Security and Supplemental Security Income programs based on disability (Administrative Review

Process...Proposed). SSA Commissioner Jo Anne B. Barnhart hoped that the proposed changes would “improve the accuracy, consistency, and timeliness of decision making throughout the disability determination process.”

In a September 23, 2005 hearing before the House Ways and Means Subcommittee on Social Security, the SSA proposed 10 new approaches (See Appendix B) to improve the disability determination process (Administrative Review Process...Proposed.). Among these was a proposal to develop a Quick Disability Determination (QDD) process.

History of the Regulation

The proposed QDD process was designed to be a state level screening system performed by special units “comprised of experienced disability examiners whose sole focus will be the efficient, accurate, and timely adjudication of QDD claims” (Administrative Review Process...Proposed, p. 43594). Initially, the number of claims that would qualify for this type of determination would be small; the number of conditions considered would increase with greater experience. The QDD units would utilize a “predictive model screening software tool that will identify claims that indicate a high degree of probability that an individual both meets our definition of disability and has readily available medical evidence” (Administrative Review Process...Proposed, p. 43594). The software would alert the State QDD units that the claim meets the criteria for quick adjudication. It would be expected that “units would provide favorable determination of disability within 20 days or less to disability applicants who are clearly disabled...” (Administrative Review Process...Proposed, p. 43594). The QDD units would not make unfavorable determinations; questionable claims, or claims that take

longer than 20 days, would be funneled into the usual process. The new rule would also require that the claimant's diagnosis be verified by a medical or psychological expert "who has qualifications required by the Commissioner" (Administrative Review Process...Proposed, p. 43594).

All the proposed rules would be implemented gradually, starting in one of the smaller SSA regions, with a goal of implementing the changes in two regions over the first 12 months. The SSA determined that all of the proposed rule changes would result in increased program outlays of 1.265 billion dollars over a ten year period. These were expected to result from: (1) the increased speed of determination would mean that benefits would be paid to claimants sooner than is the case in the current system, and (2) more disabled claimants would be identified in the 10 year period because of a reduction in backlog (Administrative Review Process...Proposed).

SSA considered nearly 900 suggestions, concerning all of the new regulations, which were taken during the 90 day public comment period (US Fed News). The final rules were promulgated on March 31, 2006 (Administrative Review Process...Rules). The final QDD rule differed from the proposed rule in only one respect: clarifications were made on the requirement that the state agency, to make a quick determination, would require a medical or psychological expert. The final rule provides "that the expert verify that the medical evidence in the file is sufficient to determine that the claimant's impairments meet the standards we establish for making QDDs" (Administrative Review Process...Rules, p. 16427). Any disagreement between the examiner and the expert automatically moves the case out of the QDD process and in to routine adjudication.

The Regulation as Law

The QDD regulation was met with mixed reviews. Congressional testimony was generally favorable (Federal News Service) and there was only a single negative press report (The Daily Record...). Legal scholars specializing in social security disability hailed QDDs as a major improvement (Bloch, Lubbers, & Verkull, 2007). But state agencies wondered about the wisdom of using their most experienced examiners in the QDD process, diverting these examiners from reviewing more complicated claims, and lowering the overall quality of the adjudicatory process. Smaller DDS offices, in particular, were concerned about limited manpower and lack of flexibility in devoting their best people to the QDD units. There were many concerns about the practicality of the 20-calendar-day turn around time (Administrative Review Process...Rules).

Experience of the New England States

The Quick Disability Determination rule was codified in the CFR on April 1, 2006 (42 U.S.C.S). QDDs, and the other changes in the SSA disability determination process became effective August 1, 2006 and were initially implemented in the SSA's Boston Region; the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. A DDS officer in Rhode Island (Cannon) reported that the software had produced some false positive results, which were appropriately identified and reversed by the examiner reviewing the case. Three percent of new disability claims in these states fell into the QDD process, with 97 percent settled within 21 days, and an average decision time of 11 days (Social Security Online, September 5, 2007). No significant administrative costs were associated with the electronic process. Twelve days was the

average QDD processing time, with the majority taking 9 days or less, and “only a small minority of the claims exceeding the 20 day threshold” (Amendments to the Quick...).

Two modifications to the 2006 rules were made to the final rules of 2007. First, the requirement that the State DDS adjudicate any claim sent to it under QDD within 20 days calendar days, or be subject to regular processing, was dropped. SSA was “concerned that the need to obtain evidence within the 20 day period may burden the medical and other providers who submit evidence to us, and we have reports of some resistance from health care providers stemming from efforts to satisfy the 20 day deadline (Amendments to the Quick...). SSA also felt confident that the speedy average-determination-time demonstrated in New England would continue and that claims exceeding the 20 day threshold would be better served to continue in the QDD process until complete.

Second, the requirement that State agencies have dedicated QDD units was eliminated. The initial intent of the QDD units was “to ensure that QDD claims were processed by individuals with the knowledge, training, and experience to effectively carry out the QDD function and to ensure that they could be held accountable for performing this important task” (Amendments to the Quick...). The SSA signaled its desire to leave the State agencies, particularly small offices with limited staffs, the flexibility to establish their own work flows and processes. The only requirement is that QDDs be made by personnel designated for that purpose, and that they have skills and experience to do the work.

Utah's Division of Disability Determination Services

Based on its initial positive experience in New England, the SSA extended QDDs to all State DDSs in October of 2007, with a mandate of compliance by March 4th of 2008. The State of Utah's Division of Disability Determination Services, with a staff of approximately 35 claims examiners, designated three of its most experienced and capable examiners as Disability Claims Specialists who would specifically handle QDD claims (Nakao, et.al.). Previously, claims tagged by the SSA as needing expedited handling were divided among the entire examiner staff and initial requests for medical documentation were requested in writing and sent via mail. In the new process, QDD cases are electronically sent to one of the three designated examiners and acted on immediately with substantiating evidence being requested via phone contact to providers.

Skeptics of QDDs have noted that the computer was picking up the same cases that had historically been rapidly identified and adjudicated in a matter of days (Cannon). A Utah critic opined "these quick cases were always recognized as easy and quick and done quickly anyway" and that "it hasn't made any substantial difference on the ground" (Holmes). But the experience of Utah's QDD specialists has been distinctly different (Nakao, et al.). The only way to expedite these claims is by extensive case management. Obtaining medical records, even for these most severely disabled, is a labor intensive process. Case management requires multiple calls to several different providers, navigation of multiple (and often complex) medical record systems, and cajoling of clinical staff and providers. The QDD specialists, already quite experienced in "treasure hunting" for information, reported becoming rapidly more skilled in the process as they learned more about the health information systems of various medical systems. They

also became more adept in knowing what information they needed and developed a network of contacts to help them with the process.

Approximately 3 to 5 percent of cases received by Utah's DDS are tagged by the SSA as QDD cases (Nakao et. al.). State DDS offices are not privy to detailed information on the parameters built in to the QDD software, but do know that over 80,000 elements are examined in tagging a QDD claim. The software algorithm keys in on certain terms. Utah DDS has no feeling for whether the algorithm misses important terms that may suggest severe disability. The system does tag inappropriate cases. Utah's QDD specialists gave an example where the combination of the terms "cancer" and "terminal" tagged a claim as urgent. Only after considerable expenditure of time was it found that the "terminal" cancer was diagnosed and treated in the 1970s (Nakao, et. al.)

Utah's DDS reports that they have received positive feedback on QDD from DDS colleagues in the New England States. The limiting factor in New England's time to completion of quick determinations has been the inability to get providers to move more quickly in sending records. New England's DDS offices have also received feedback from health care providers complaining about the new aggressiveness of DDS staff in trying to acquire information (Nakao, et al.). Utah's DSS does not have precise data on how fast the most disabled claimants were handled in the prior process, or any new data on determination time after the implementation of QDD. It is their sense that the most severely disabled claimants were rewarded disability status within 30 days in the previous process and that the average adjudication time with QDD improved "from weeks to days" (Nakao, et al.).

Utah's advocates for the disabled, experienced with the SSA's painfully slow disability determination process, have been skeptical that QDDs would make much of an impact. One advocate for the disabled (Smith) felt the new regulations were mere "smoke and mirrors." Claims for these most severely disabled individuals were usually successful within a few months previously. The most obviously disabled, usually victims of sudden neurological trauma or pathology, are preoccupied with acute medical and rehabilitation needs. Financial concerns are less acute for this group and disability benefits usually arrive in a timely manner. The lengthy processes involved with denials and appeals of claims for the less severely ill is viewed as a much larger problem, and not addressed by QDDs.

ANALYSIS

Effect of the Regulation on Initial SSDI Determinations

The Social Security Administration responded to congressional and Bush Administration concerns regarding the timeliness of initial SSDI determinations, and their own projection of a geometric increase in disability claims by proposing an innovative new process. Quick Disability Determinations were designed to speed up the initial adjudication of benefits for the most severely disabled applicants. Equally important, in the public domain, is ensuring that the process is equitable. All claimants, in all jurisdictions, should be treated in a similar manner. The speediness and equity of any process, private or public, is always controlled by time, manpower, and cost consideration. These constrain can limit the thoroughness of data collection and analysis, and ultimately affect the speed, accuracy, and consistency of the adjudications.

Speed

The SSA's initial analysis of results in its New England Region and field experience in Utah suggests that QDDs make final determinations for the most severely disabled claimants more rapidly than the prior process. The time savings appears to be in the order of a several days to a few weeks. But benefit determination for the most severely disabled claimants was already being handled relatively speedily in some jurisdictions. The SSA has cited a 97 percent settlement rate within 21 days for QDDs, but has not publicly stated settlement rates and times for the previous process. Even if the average time of settlement has improved by a matter of several days or a few weeks, the financial and emotional impact on this population, most of who are preoccupied with acute medical concerns, is questionable. Public and congressional concerns with the speed of SSDI determination have focused on the length of the determination process for the mild to moderately disabled, and the appeals process for any claimants denied benefits. QDDs do not address these issues.

Accuracy

The QDD software has likely produced some false negative results that may not be identified for several more months. If claimants who would previously have been identified by human scoring as severely disabled are being missed by QDDs, the new process is detrimental. But under-scoring was anticipated and is expected to improve as there is more experience with the computer scoring system and software is upgraded.

Over-scoring is being picked up rapidly and corrected. These false-positives have required time and attention that could have been used evaluating properly scored claims. But with QDDs speeding up rapid determinations for the severely disabled in general,

over-scoring is not contributing to delayed determinations and improvements in software will reduce such errors.

Consistency

No hard data is available in this area. But consistency is likely the major improvement that QDDs bring to the initial determination process. First, the addition of a computer program for initial scoring eliminates human objective and subjective errors. Certain terminology, indicating the presence of a severe disability, may be unfamiliar to a reviewer or overlooked in visual scanning. Individual examiners may have personal biases favoring their opinion on whether a diagnosis suggests severe disability. Examiners may erroneously relegate some claims to routine review or devote excessive attention to a condition that doesn't ordinarily denote severe disability. Examiners vary considerable in their training and employment backgrounds prior to joining State DDS units. Utah's three QDD examiners were previously employed in banking, insurance, and recreational therapy (Nakao, et al.). These varying occupational experiences, combined with examiner differences in age, gender, ethnicity, personal health, and family health status, may contribute to variation in initial tagging of claims as urgent or routine. Computer scoring eliminates these human factors that color decision making.

An algorithmic approach to decision making is criticized by many, particularly in health care fields, as being "cookbook," inappropriate, and inferior to human judgment in dealing with the unique, individual biology and environment of human beings. But algorithms, when applied to large systems where thousands of individuals are making multiple decisions, tend to improve decision-making processes' consistency, and safety. When algorithms can be rationally overridden by human decision-makers, automation is

unlikely to hamper the outcomes of the highest performing human examiner, who may consistently do better than the algorithm. A well designed algorithm should do as well as the average human decision-maker and considerably better than the lowest performers. In addition, the highest performing human examiner will not be a high performer in all situations and may, on occasion, become the average or low performer. Algorithms should never hurt the superior or average decision maker and will always improve the lower performer. Computers are ideal for running such processes and should produce an across-the-board decision process that is more consistent than one based on human judgments alone.

Secondly, the QDD process has improved consistency by focusing State DDS offices on identifying the most severely disabled. Although the requirement for State DDS offices to form dedicated QDD units was dropped from the final rule of 2007, QDDs are likely to focus State DDS resources and case management efforts on the potentially most severely disabled claimants. It is likely that many State DDS offices have, like Utah, directed QDD claims to their more experienced and/or effective examiners. A smaller group of individuals handling the claims of the most severely disabled would tend to decrease the variability of results across the nation.

Number of appeals

With Quick Disability Determinations in effect for only 2 years in the New England States, and less than 1 year nationwide, the effect on the appeals process is yet unknown. The entire appeals process, including court rulings, can take years. Since QDD was just one of many changes made in the SSDI and SSI determination process, it will likely be

difficult to sort out QDD's effect on the process from the multiple other changes that were made in 2006.

Overall Impact of the Regulation

Though not clearly proven yet, the addition of this new computer software tool to the determination process seems to be a step in the right direction. Computerization methodically considers appropriate factors that go into a determination. Even an experienced and careful human screener can be expected to occasionally miss important information. Lower performing examiners will likely benefit from the computer's identification of key indicators of severe disability

The software should improve with time. The SSA notes that "as we gain experience with the new QDD system, we expect that the number and characteristics of claims that are identified as potential QDDs will gradually increase (Administrative Review Process...Rules, p. 16430). If the computer is not superior or equal to, the average human evaluator at this time, it will be in the future. .

Computerization may eventually produce savings in time and personnel costs. Even a skilled human examiner will be much slower in reviewing initial claims information than a well functioning computer program. Examiners could have more time available to work on timely adjudication of less urgent claims or positions eliminated completely.

QDDs have already produced a significant improvement in the efficiency of State DDS offices by focusing resources on claimants needing timely determination. Based on the experience in Rhode Island (Cannon, 2007) and Utah (Nakao, et al, 2008), the QDD process has forced State DDS offices to focus manpower and expertise on cases more

likely to be severely disabled, and requiring timely claims processing. Although the change may be transparent to these most severely disabled claimants, it has resulted in an improved process.

Historically, the most difficult technical challenges that the disability determination process has faced is the gathering of outside medical evidence, making sure the case record is complete, and organizing the record so that a successful determination can be made (Bloch, January, 2007). But a knowledgeable, determined, and persistent examiner can get the job done. It appears that, at least initially, the development of the QDD process has forced the States to identify their most competent case managers and to focus these individuals on the task of finding, and quickly adjudicating, the most clear cut, and deserving, disability claimants.

What remains to be seen is whether the implementation of the QDD weakens the overall adjudicatory process. Focusing skilled and experienced manpower towards the front-end processes of finding and adjudicating the highest severity cases may divert resources from the routine adjudication of the average and marginal cases. This could result in lesser quality determinations across-the-board. Utah's DDS office feels there has been no overall negative impact on routine adjudications. Placing the QDD claims in the hands of their most experienced and capable examiners, who have rapidly improved their case management skills over a period of a few months, have allowed these cases to be processed more quickly. This has freed up other staff to pursue routine work, and yet has allowed the QDD examiners to efficiently dispatch the QDD claims and still have time to assist in the evaluation of the routine claims (Nakao, et al.),

Understanding the future significance of QDDs requires a discussion of the core philosophy of disability determination. As discussed by Bloch (January 2007), disability evaluation can fall into two basic models. The medical model of disability determines disability by focusing on defects of human anatomy and physiology. Medical examination and testing documents damaged limbs or sensory organs; diseased muscles, joints and nerves; and the loss of function of nervous, musculoskeletal, circulatory, cardiac, pulmonary, urinary, and gastrointestinal systems. When pathology is present, functional deficits can be quantified in such areas as joint range of motion, muscle strength, cognitive function, or physical stamina. Legislators and administrators feel comfortable with the concrete, objective, quantifiable, and “scientific” data that the medical model produces because it offers clear, cut-and-dried parameters that can more easily produce definitive yes-or-no answers about disability eligibility. This allows Congress and the SSA to better estimate future program costs, and avoids awarding public benefits to real, or perceived, malingers. Adjudication based on the medical model can be more easily done in a paper review process, minimizes subjectivity, and helps avoid the holding of inherently emotion laded, face-to-face hearings.

The social model of disability takes vocational parameters into account. Quantifiable data such as occupation, age, and level of education are included. Also included are more subjective factors such as assessment of the claimant’s ability to retrain, and ability to accommodate and generally adapt to the disability. Social/vocational definitions of disability make legislators nervous because the costs become more open ended.

Congressional efforts to control costs are reflected in specific directives to the SSA, spanning many decades, that define eligibility for and definitions of disability (Bloch,

2007). Less concrete definitions of disability play to political fears of promoting the welfare state because of lingering questions of actual need, creation of dependence, creation of disincentives to work, malingering, character flaws of the disabled, and moral rights to the public coffers. Social determinations of disability make administrators' work tougher because of the increased subjectivity and vagueness of the determination. Social/vocational determinations may take more time and be more costly because paper evaluations may need to be supplemented by face-to-face hearings.

Under the current disability process, determinations are made using a mixture of medical and vocational criteria. But all concerned, Congress and the SSA, would like to increase administrators' ability to make determinations by emphasizing medical criteria. The QDD was just a minor rule change towards that end. Much more elaborate rule changes, aimed at improving the national standards used to determine medically based disability, were also promulgated on March 31, 2006.

The SSA's intent to strengthen, and emphasize, the medical criteria for disability determination is also demonstrated by its 2005 request that the Institute of Medicine (IOM) "recommend ways to improve the use of medical expertise in the disability determination process" and "recommend improvements in its Listing of Impairments" (National Academy of Sciences). The result was IOM's 2007 publication of the 250 page *Improving the Social Security Disability Decision Process* (IOM 2007).

The QDD's addition of a computer to the determination process is further evidence of the SSA's hope to strengthen the impact of medical determinations. Using a computer program to screen for the most obvious cases is a tentative first step in automating the entire determination process. The SSA clearly intends to enhance the capabilities of the

computer software as experience is gained. Surely, as software is enhanced and technology improved, using computers as a scoring tool will move from the initial, obvious cases, to the average cases. If the SSA's and Congress's goal is to improve the ability to quantify disability, sophisticated computer technology would be the ultimate answer.

The criteria currently used by the QDD software for scoring are unknown to the public and to the State DDS offices (Cannon). Vocational data may be part of the determination. As computer technology improves, vocational data will likely be added. However, quantifiable information that is gathered in medical evaluations, versus vocational data, is much more applicable to computerization. Therefore, computerization would tend to push the scales towards a medical definition of disability.

Any process that succinctly quantifies ability to work, prepared electronically, will no doubt greatly improve the speed of the adjudication. The big question is what will happen to the quality of the adjudication. Will computerization of the process dehumanize the adjudication, decrease the number of hearings, and err towards the denial of benefits for deserving claimants? The predictive models will need to be very successful in matching vocational and medical data or, more likely, human examiners will continue to be essential in correlating physical and mental deficits with vocational requirements.

CONCLUSIONS

Since its inception 50 years ago, the Social Security Disability Insurance program has been challenged by political controversies and administrative difficulties. Congressional thought has been a tidal, ebb and flow of compassion for unfortunate citizens, skepticism

about those citizens' actual needs, concern that the benefit does more harm to citizens than good, political arguments concerning the proper role of government, and concerns over financial costs. The Social Security Administration has been challenged with accurately, quickly, and fairly determining disability status in a cost effective manner. The SSA promulgated extensive rule changes in 2006. Among these changes is a Quick Disability Determination process designed to identify the most severely disabled claimants and rapidly declare them disabled. The newly established QDD process appears to be a promising innovation that will help the SSA. There is evidence that the claims of the most severely disabled are being more rapidly settled. Whether this is of practical benefit for this group of claimants and families, who are frequently focusing on the challenges of an acute medical crisis, is debatable. QDDs have likely improved the fairness of initial adjudication by decreasing the possibility of human error and personal biases producing a flawed result. It has also likely encouraged State DDS offices to pass these claims through fewer, but more skilled, examiners. This has resulted in improved efficiency and equity of the initial determination.

The addition of a computerized process is a landmark as a predictor of the future direction of disability determinations. The addition of QDDs to the determination process, plus other recent SSA rule changes and initiatives, makes a clear statement that the SSA wishes to move towards emphasizing medical factors in making disability determination over social/vocational criteria.

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42 U.S.C.S. Sec. 405 (2007).

Appendix A

Factors that may affect the consistency of SSA disability decision making:

- economic differences among the States;
- demographic differences among the States;
- differences in health status and access to care;
- State public policy actions (e.g., eliminating general assistance programs; requiring individuals to file for SSA's disability programs as a condition of eligibility for State benefits);
- differences in assessing the accuracy of State decision making among SSA's regional Offices of Quality Assurance;
- differences in quality assurance procedures applied to ALJs and State agencies;
- hearing office differences in administrative practices (e.g., variation in use of and training of vocational and medical experts at ALJ hearings);
- differences in the training given to ALJs and State adjudicators;
- differences in State agency training practices;
- the fact that most claimants are never seen by an adjudicator until they have an ALJ hearing;
- involvement of attorneys and other claimant representatives at the ALJ hearing;
- changes in the adjudicative climate (the "message" sent by SSA, the Congress, or others to those who adjudicate claims);
- rules that allow claimants to introduce new evidence and allegations at each stage of the appeals process;
- lack of clear and unified policy guidance from SSA;
- insufficient funding and staffing for the State agencies and for hearing offices; and
- SSA pressures on State agencies and on ALJs to meet productivity goals.

IOM, 2007, pp. 61-62

Appendix B

Proposals to improve the SSA disability determination process

- A Quick Disability Determination process would be established at the outset of the claims process to identify people who are clearly disabled;
- Medical and vocational expertise within a new Federal expert unit would be available to disability decision makers at all levels of the process, including the DDSs, reviewing officials, and administrative law judges;
- We would eliminate the consideration step of the administrative review process and end the disability prototype test being conducted in 10 States;
- We would institute both in-line and end-of-line quality assurance programs at every step of the process (but the hearing level in-line quality assurance program would not apply to administrative law judge decision making);
- Following the initial determination made by the DDS, a Federal reviewing official would review the claim upon the claimant's request. The reviewing official would be authorized to issue an allowance or to deny the claim. If the reviewing official did not allow the claim, he or she would be required to explain why the disability claim should be denied;
- If requested by a claimant who was dissatisfied with the reviewing official's decision, an administrative law judge would conduct an administrative hearing. If the administrative law judge determined that a favorable decision should be made, the administrative law judge would explain the basis for disagreeing with the reviewing official's decision;
- Claimants could continue to submit evidence to support their claim through the administrative law judge level of review. However, the record would be closed after the administrative law judge decision was issued;
- The Appeals Council stage of the current process would be eliminated. A portion of administrative law judge decisions would be reviewed by a centralized quality control staff. If the administrative law judge's decision was not chosen to be reviewed by the centralized quality control staff, the decision of the administrative law judge would become the final Agency decision;
- Making the panel's decision the final Agency decision.
- We would improve the quality of the administrative record by ensuring that evidence development is performed early in the disability determination process, and by ensuring that adjudicators sufficiently articulate the basis of their adjudications.

Administrative Review Process...Proposed, p. 43592