Hearing on the Commissioner of Social Security's Proposed Improvements to the Disability Determination Process

House Ways and Means Committee
Subcommittee on Social Security and Subcommittee on Human Resources

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Testimony of
Marty Ford
Co-Chair, Social Security Task Force
Consortium for Citizens with Disabilities

ON BEHALF OF:

American Association of People with Disabilities
American Association on Mental Retardation
American Council of the Blind
American Foundation for the Blind
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law
Easter Seals, Inc.
Epilepsy Foundation
Inter-National Association of Business, Industry and Rehabilitation
National Alliance for the Mentally Ill
National Association of Councils on Developmental Disabilities
National Disability Rights Network, *formerly National Association of Protection and Advocacy Systems*
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
Paralyzed Veterans of America
The Arc of the United States
Title II Community AIDS National Network
United Cerebral Palsy
United Spinal Association

TESTIMONY OF MARTY FORD, CO-CHAIR, SOCIAL SECURITY TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES

HEARING ON PROPOSED IMPROVEMENTS TO THE DISABILITY DETERMINATION PROCESS, SEPTEMBER 27, 2005, HOUSE SUBCOMMITTEES ON SOCIAL SECURITY AND HUMAN RESOURCES

Chairman McCrery, Chairman Herger, Representative Levin, Representative McDermott, and Members of the Subcommittees, thank you for this opportunity to testify on the proposal to revise the disability determination process embodied in the notice of proposed rulemaking (NPRM) for the Administrative Review Process for Adjudicating Initial Disability Claims; Proposed Rule, 70 *Federal Register* 43590 (July 27, 2005).

I am a member of the policy team for The Arc and UCP Disability Policy Collaboration, which is a joint effort of The Arc of the United States and United Cerebral Palsy. I am testifying here today in my role as Co-Chair of the Social Security Task Force of the Consortium for Citizens with Disabilities. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

Throughout the development of this proposal, we have applauded Commissioner Barnhart for establishing improvement of the disability determination process as a high priority. We have also applauded her work in making the design process an open one. She has sought the comments of all interested parties, including beneficiaries and consumer advocacy organizations, in response to her initial draft.

As we testified before you last year, it is critical that SSA improve its process for making disability determinations. People with severe disabilities often are forced to wait years for a final decision. This is damaging not only to the individual with a disability and his or her family, but also to public perception of the integrity of the program. Last year, we stated:

> We strongly support efforts to reduce unnecessary delays for claimants and to make the process more efficient, so long as the steps proposed do not affect the fairness of the process to determine a claimant's entitlement to benefits. Further, changes at the "front end" can have a significant beneficial impact on improving the backlogs and delays later in the appeals process, by making correct disability determinations at the earliest possible point. Emphasis on improving the "front end" of the process is appropriate and warranted, since the vast majority of claims are allowed at the initial levels. Any changes to the process must be measured against the extent to which they ensure fairness and protect the rights of people with disabilities.

We have conducted an initial review of the NPRM based on the above principles: making the process more efficient and making correct decisions earlier in the process so long as the changes ensure fairness and protect the rights of people with disabilities. I will discuss our initial conclusions and recommendations for changes in this testimony. We will, of course, submit more detailed analysis and recommendations to Commissioner Barnhart before the close of the public comment period and

we will submit those comments to the Subcommittees, also. It is possible that our continued work may result in additional recommendations not identified at this point.

As noted, we applaud the Commissioner's efforts to improve the "front-end" of the disability determination process. This includes efforts to implement technological improvements, including the electronic disability process, eDIB, and improving development of the application and the supporting evidence. While these improvements have great potential for improving the adjudication process and are critical to the success of the system, it is important to understand that they are already underway and are not the subject of this NPRM.

General Comments

The CCD Social Security Task Force believes that there are several proposals within the NPRM which could be improvements to the program from the perspective of people with disabilities. These include development of a national network of expert medical units, the elimination of the reconsideration step, and the quick decision process. However, we have grave concerns about the impact on people with disabilities of proposed regulations in the appeals process from the reviewing official stage to the administrative law judge level, to the decision review board level and the elimination of the Appeals Council.

Our concerns about the appeals process fall into several overall areas:

- The overall impact of the new time limits imposed on claimants, with no opportunities to show good cause for failure to meet those time limits, could result in unfair and unjust decisions which rest on technicalities and not on the truth of whether the individual is actually disabled. In addition, even "good cause" rules are insufficient because that means that the discretion lies with SSA or an ALJ to decide whether to accept the evidence, rather than ensuring that the evidence will be considered in deciding the claim. (A chart comparing the current statutory and regulatory time limits to the proposed regulations is attached as Appendix A.)
- New requirements to specify issues on appeal at the time of filing the appeal create new opportunities for claimants to make irreparable errors in the process.
- The new requirement to submit all evidence "available to you", including adverse evidence or evidence the claimant considers "unfavorable," raises new legal issues for both the claimant and attorney representatives.
- The appeals process offers no recourse for claimants' inability to access evidence from medical and vocational sources.
- The appeals process offers no recourse within SSA for a claimant to seek correction of mistakes or errors made by SSA or the ALJ.
- The appeals process offers no recourse for addressing abuse of discretion by an ALJ.
- Some proposed changes may exceed the Commissioner's authority under the Social Security Act.

On the whole, the requirements of the appeals process seem to assume that the claimant and/or the representative have some level of control over the sources of medical or vocational evidence. The proposed timelines for submission of evidence are strict and, in our opinion, unreasonable. Even for representatives, it often can be difficult to secure medical evidence from most treating sources and medical institutions. They may wait weeks or months for the evidence to be produced by the treating source. It is even harder to secure evidence more than once from the same source. For claimants to be permanently harmed by this inability to access evidence completely undermines the concept of a system that is intended to be non-adversarial and to assist them in a time of great need. It is

important that any changes maintain the non-adversarial nature of the process and that the procedures and their outcomes are fair and perceived as fair. Even with representation, people who have low or no incomes or only modest incomes — even those with regular medical homes — have trouble securing the medical evidence they need to prove their cases.

The proposed regulations also seem to assume that a claimant is represented from the beginning of the process. Reality is much different. People often do not seek representation until late in the process, not understanding how important it can be. Based on experience, many representatives believe that they would not be consulted until many of the filing deadlines in the proposed regulations are imminent or gone. Under current law, late filings are possible with a showing of "good cause." The proposed regulations would prohibit such filings. Even when contacted before the deadline, many representatives will not have enough notice about the issues in the case to be able to file notice about the issues for appeal.

Many people with disabilities who apply for disability benefits have medical conditions that are hard to diagnose or for which diagnosis may come late in the process — such as lupus or multiple sclerosis. Others have impairments that make it more likely they will fall into any procedural cracks in the system, especially those with mental impairments and cognitive impairments. As the Congress has already made clear in legislation, it is not acceptable to say that a person who loses his/her appeal can always reapply. Especially in Title II, where insured status for disability benefits is different from insured status for retirement benefits as a result of the recency of work test, a person may be barred by the recency of work test from succeeding on a later application regardless of the condition worsening or the existence of new impairments.

Any regulatory changes should comply with the Social Security Act and should not undermine the confidence that the public has in the Social Security appeals process. For decades, Congress, the United States Supreme Court, and SSA have recognized that the informality of SSA's process is a critical aspect of the program. Creating unreasonable procedural barriers to eligibility is inconsistent with Congress' intent to keep the process informal and non-adversarial, and with the intent of the program itself, which is to correctly determine eligibility for claimants, awarding benefits if a person meets the statutory requirements.

While it is appropriate to deny a claim because the evidence establishes that the individual does not meet the statutory definition of disability, it is wrong to deny benefits to an otherwise eligible individual with a disability who falls between procedural "cracks" or who is unable to submit relevant evidence because of procedural limitations.

Electronic File

The electronic file has an important role in eliminating delays and dramatically improving processing times. The work SSA has underway to put in place an electronic application process and an electronic disability file will eliminate a lot of the delay. This will greatly facilitate movement of files from one part of SSA to another, reduce or eliminate loss of evidence, and probably most important, reduce or eliminate the loss or misplacement of entire case files. All of these problems can add weeks, months or years to processing time. While this work is being accomplished separate from this NPRM, it is important to factor it into any analysis about additional steps, if any, that may be needed to improve the process.

Initial Determination Level

We support SSA's proposal to process "Quick Disability Determination" cases within 20 days for those cases with a high probability of meeting the statutory definition. We also support having the claim go through the normal process if the 20 day limit or the criteria cannot be met. This step should assist those individuals whose cases could be satisfactorily handled quickly by removing them from the lengthier administrative procedures.

We support establishment of a Federal Expert Unit (FEU) to provide medical, psychological and vocational expertise to disability adjudicators at all administrative levels[1] and to oversee a "national network" (NN) of the medical, psychological, and vocational experts.[2] We support the requirement that the NN experts meet qualifications set by SSA and that NN experts, which can include state disability determination service (DDS) physicians if they meet SSA qualifications, will be paid at rates established by SSA. We believe that these steps could lead to better quality evaluations and the use of vocational expertise earlier in the process.

Recommendation: We recommend that qualifications for consultative examiners (CEs) and rules for referrals to CEs be included in these regulations or that SSA issue changes in this area as soon as possible. It is our understanding that SSA has work underway on these issues.

Reviewing Official

We support the elimination of the reconsideration step at the DDS level. We also support establishment of the Federal Reviewing Official (RO)[3] as an attorney with knowledge of Social Security law, regulations, and policies.

However, in requiring the RO to consult with the federal expert unit/national network, the proposed regulations raise the question of who is making the decision at the RO level – the RO or the medical/vocational experts – or whether this creates a bias in favor of affirming the DDS decision.

We disagree with the requirement that the claimant submit new evidence at the same time as filing the notice of appeal to the RO (Sec. 405.215). As discussed above, claimants may not be able to gather all evidence within the specified timeframe.

Recommendation: We recommend that claimants be allowed to submit new evidence when it is available and that the regulations make clear the affirmative obligation of the RO to assist in securing needed evidence.

Administrative Law Judge

We support the goal (although it is not a substantive right) that the Administrative Law Judge (ALJ) hearing will be held within 90 days of requesting the hearing and that the hearing notice will be sent 45 days before the hearing.

However, we have many serious concerns about new requirements at the ALJ stage of appeal. These include new time limits without good cause exceptions; submission of *all* new evidence 20 days before the hearing; and submission of issues for review at the time the appeal is filed.

[1] See proposed section 405.10.
[2] See proposed section 405.15.
[3] The RO-level proposed changes are at sections 405.201 – 405.230.

Time limits: There are many new time limits (beyond the normal appeal deadlines) that make the process overly complicated. Many of the time limits have no "good cause" extension: 10 days to object to time or place of hearing [§ 405.317(a)]; 10 days to object to issues in hearing notice [§ 405.317(b)]; 10 days to submit new evidence after hearing decision [§ 405.373(a)]; 10 days to ask ALJ to vacate dismissal [§ 405.382(a)].

Under the proposed regulations, the record essentially closes 20 days before the hearing with limited exceptions. Proposed § 405.331. This means that the ALJ has the discretion to ignore any evidence submitted within 20 days of the hearing, regardless of its relevance or importance, or that it was beyond the claimant's control to obtain the evidence. What if the claimant obtains representation within fewer than 20 days of the hearing? The case law in all areas of the country is clear that it is the ALJ's duty to develop the evidence. The NPRM ignores this. Further, the statute requires the ALJ to decide based on all evidence "adduced at the hearing."

Submission of evidence: The claimant must submit all evidence "available to you." Proposed § 405.331. This includes adverse evidence. According to proposed §§ 404.1512(c) and 416.912(c), all information needed to decide the claim must be submitted, including "evidence that you consider to be unfavorable to your claim." According to the NPRM preface: "This rule will require you to submit all available evidence that supports the allegations that form the basis of your claim, as well as all available evidence that might undermine or appear contrary to your allegations." 70 Fed. Reg. 43602. We are concerned that this could trip unsuspecting claimants, especially those who are unrepresented. In addition, there is potentially a serious conflict here with state bar rules for attorneys limiting the submission of evidence that could be considered adverse to a client. The determination of what evidence should have been submitted and what "available" means could become a body of law in itself.

Submission of issues for review: Under the proposed regulations, the claimant would be required to state the issues upon which s/he seeks review. We are concerned that this may foreclose issues which emerge or become clearer as evidence is obtained or further examined. In addition, any penalties for failure to properly or fully raise issues would fall especially harshly on claimants who are unrepresented at the time they file an appeal and who may not understand the implications of this requirement. With this requirement, the process becomes more sophisticated and more adversarial. The outcome will be more decisions denying benefits on technical grounds, not on the merits of the person's claim.

Other procedural problems include:

- The 20-day submission of evidence requirement negates the advantages of the 45-day hearing notice requirement.
- Failure to appear (often for very legitimate and unavoidable reasons) at pre- and post-hearing conferences can lead to dismissal of the case.
- Other procedural rules make the process overly formal: the ALJ may "order" submission of "prehearing statements;" documents other than evidence must be "clear and legible to the fullest extent practicable" and "must use" 12 point font.

Closing the record to new evidence: After the ALJ decision, there are extremely limited exceptions and procedural requirements for submitting new evidence. Proposed § 405.373.

- Unless there is a change in the claimant's condition between the hearing and the decision, the claimant **must** first ask the ALJ to keep the record open at the hearing **and** show "good cause" for missing that deadline. The preface limits this latter exception to situations where the claimant is aware of additional evidence or is scheduled for further evaluation and

requires the ALJ to be informed at the hearing. Note that even if requested, the ALJ is not required to keep the record open and has full discretion to deny the request.

- To submit such evidence, the individual must make the request and submission within 10 days after receiving the decision. There is **no** "good cause" extension of this time limit.

These hurdles are impractical and daunting and essentially impede the ability to present evidence that could prove that an individual is eligible. We find it unfathomable that there would be a reason to keep such evidence out of the process when it could provide the very information for which the truth-seeking process is intended.

This stage in the appeals process is so important to claimants that we find it important to stop and ask two critical questions:

Why is closing the record unfair to people with disabilities? There are many legitimate reasons why evidence is not submitted earlier and thus why closing the record or creating unreasonable procedural hurdles is not beneficial to claimants. Why is it important to allow individuals to submit new evidence? (1) The process should be informal; (2) Medical conditions change; (3) The ability to submit new evidence is not always in the claimant's control; (4) Filing a new application is not a viable option (see below); and (5) There are more benign ways to limit the submission of new evidence, such as those in the current process at the Appeals Council and court levels.

Why is reapplying not a viable option? The preface states that if the claimant cannot submit new evidence, he or she has the right to file a new application. 70 Fed. Reg. 43597. This is misleading and inaccurate and may permanently foreclose eligibility: (1) Benefits would be lost from the effective date of the first application; (2) In Title II cases, Medicare would be delayed and the person could lose disability insured status and not be eligible at all if a new application is filed; (3) If the issue in the new application is the same as in the first, the doctrine of "res judicata" bars consideration of the second application; and (4) Congress previously passed corrective legislation on this very issue because in the past, SSA notices misled claimants regarding the adverse effect of reapplying instead of appealing.[4] At least 15 years after Congress acted on this, it is troubling to realize that the concept is still imbedded in SSA's thinking (and used as a justification here for preventing consideration of all of the evidence even if it is filed a little late).

Recommendations: Restore the timeframes for appeals and rules for submission of new evidence of the current regulations.

Decision Review Board

We believe that it is not wise to eliminate the Appeals Council (AC) and its most important function - review of appeals filed *by claimants* from unfavorable ALJ decisions - at this time. Right now, the AC remands close to one-quarter of the cases it sees to the ALJs and it also reverses a small number of cases outright (about 2 percent). The electronic process that SSA already is implementing should eliminate one of the key problems that have plagued the AC for years: lost files.

SSA proposes to eliminate the AC and create a Decision Review Board (DRB). Individuals would not be able to file an appeal to the DRB on the merits of their claim. (SSA does protect the ability of individuals to appeal in cases where an ALJ dismisses a case, as these appeals cannot be filed in federal court.) The only cases that the DRB will review on the merits are those which an SSA

[4] 42 U.S.C. §§ 405(b)(3) and 1383(c)(1).

computer profiling system identifies as cases in need of review. If the DRB plans to review the case, the person will be notified of this fact at the time that s/he receives his/her ALJ decision.

It is unquestioned that eliminating the AC will result in an increase in the number of cases filed in federal court. At the same time, it also is likely that many people will not file in federal court due to the cost or because filing in federal court is a fairly intimidating act to consider. This means that, in most cases, the un-reviewed ALJ decision will be the final decision.

Recommendations: SSA should not repeal the regulation that established the Appeals Council at this time. SSA apparently looked at this issue as part of its "prototype" pilot, but cannot produce any information on the outcomes of eliminating the AC and going straight to court. Should SSA want to proceed with another pilot, that would be far more desirable than eliminating the AC at this point. In addition, since SSA is only planning to roll this entire process out in a couple of regions in 2006, there is time to do such a pilot and evaluate the results prior to deciding whether to issue a second NPRM that might eliminate the AC at a future point.

If, however, SSA intends to proceed to eliminate the Appeals Council at this time, we offer two proposals to modify the proposed Decision Review Board to ensure that it protects the ability of people with disabilities to have their cases fully and fairly considered by SSA.

First, we propose that the new Decision Review Board be modified to provide that it will receive, consider, and decide appeals by claimants and beneficiaries from unfavorable ALJ decisions. Under our proposal, if the DRB failed to act within a specified time, it would issue a "right to sue" letter which the person could use to seek judicial review in federal court. (The claimant could elect to wait for the final DRB decision prior to deciding whether to seek judicial review or seek review within a fixed time period upon receiving the "right to sue" letter.) Claimants would retain their ability to secure review within SSA and the proposal would ensure that the internal SSA process is meaningful and efficient. The DRB would still continue to review the case and issue a decision after the right to sue letter has been issued. If the claimant had not filed suit after receipt of the "right to sue" letter, s/he could decide to file suit after the DRB issues its decision, if needed. Meanwhile, SSA could retain the new functions it proposes for the DRB, reviewing both allowances and denials based on a computer screening tool, and also meet the Commissioner's in-line quality assurance goals.

How would this proposed change help?

- Provides claimants the benefit of a chance for additional review within the agency — preserves this current, very important protection.

- Incorporates a time limit for how long most cases could be pending at this level, addressing a very common complaint about delays at the Appeals Council level.

- Provides SSA with the ability to identify cases it would not like to defend in federal district court and the opportunity to identify and solve issues that should not require district court review. (It is not reasonable to expect that its computer screening tools will do this.)

Our second proposal would require that the Decision Review Board review cases in which relevant evidence becomes available after the ALJ decision to determine whether it should be considered in the claimant's case. Under the proposed regulations, SSA makes it very difficult, often impossible, for evidence to be considered after 20 days before the hearing. SSA should establish a process that allows the claimant to ask the ALJ to reopen the record or allows claimants to show that there is new

and material evidence and good cause why it was not offered below. Some claimants would opt to return to the ALJ. Even so, there will need to be a mechanism for some claimants to request that the DRB require that the new and material evidence be considered. Further, there needs to be a way to address the problem of the ALJ who will not honor the request to keep the record open to file additional evidence. If SSA does not include such a mechanism, many claimants will have to file in federal court simply to secure consideration of evidence that is new and material and for which there is good cause that it was not filed earlier. (The statute says that the courts can make such a remand "at any time.") The result will be more delay as federal courts order cases remanded back for new ALJ hearings.

Reopening

The proposed regulations severely limit a claimant's right to request reopening.[5] The current regulations allow a claimant to request that SSA reopen a decision within one year of the initial determination "for any reason" or to reopen for "good cause" within two (SSI) or four (Title II) years of the initial determination. "Good cause" includes "new and material evidence." Instead, under the NPRM, reopening could only be requested within **six months** for two situations: (a) clerical error in computation of benefits or (2) clear error on the face of the evidence. There would be no opportunity to reopen for "any reason" or for "good cause" including to consider "new and material evidence".

Reopening a prior application can be very important for people with disabilities who clearly meet the disability standard but were unable to adequately articulate their claim in the first application, were unable to obtain evidence, or have an impairment that is difficult to diagnose, such as multiple sclerosis or certain mental impairments. Unrepresented claimants with mental impairments frequently reapply instead of appealing and eventually their representatives, on a subsequent claim, will obtain new and material evidence that established disability as of the earlier application. For the same reasons discussed above, reapplying is not a viable option.

Recommendation: We recommend that the current provisions that allow for reopening within one year for any reason or within two years (SSI) or four years (Title II) for good cause, which includes "new and material evidence," be retained.

Judicial Review

The claimant still has a right to appeal the Commissioner's "final decision" (either the ALJ or DRB decision) to federal court.[6] This level of review is generally not affected except as it could be impacted by the other procedural changes, primarily the elimination of claimant-initiated Appeals Council reviews.

We are concerned that more cases will have to be filed in federal court because ALJs will have more authority to ignore new and material evidence submitted within 20 days of a hearing or later. Under current law, a court may remand a case if there is "new and material" evidence and there is "good cause" for not submitting it earlier.[7] While it remains to be seen how the courts would respond if the ALJs or DRB refused to consider such evidence, it is likely that the number of court appeals will increase requesting that courts exercise their statutory authority. Further, there will be more court remands to the agency for consideration of evidence that should have been part of the administrative record in the first place.

[5] The proposed changes in reopening are at sections 405.601 and 405.605.
[6] See proposed section 405.501.
[7] 42 U.S.C. § 405(g).

Authority within the Social Security Act

While we support the Commissioner in her efforts to improve the disability determination process and to shorten the length of time that it takes to get a final decision in a case, we are concerned that some of the proposed regulations may go beyond the authority granted to the Commissioner by the statute. Our concerns are as follows:

While broad, there are limits to the Commissioner's authority: Section 205(a) of the Social Security Act, 42 U.S.C. §405(a), provides: "The Commissioner shall have full power and authority to make rules and regulations and to establish procedures, *not inconsistent with the provisions of this title,* which are necessary or appropriate to carry out such provisions, and shall adopt *reasonable* and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder." (emphases added)

Requiring that evidence be filed 20 days before the hearing and that the person identify all issues in the notice of appeal appear to violate the statute: Section 205(b) requires that if a person disagrees with the Commissioner's decision, "the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, *shall, on the basis of evidence adduced at the hearing,* affirm, modify, or reverse the Commissioner's findings of fact and such decision…" (emphasis added)

If courts can require SSA to take new and material evidence at any time, how can SSA limit taking such evidence within its administrative process? Will individuals with disabilities really have to go to federal court to get an order telling SSA to consider the evidence? Section 205(g) provides that a federal district court "may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding…"

Congress has already made clear that it is concerned when SSA encourages people to reapply for benefits rather than appeal, one of the justifications used in the preface to the NPRM. Section 205(b)(3)(A) provides: "A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for a denial of a subsequent application for any benefit under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221."

Further, section 205(b)(3)(B) provides: "In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this title of choosing to reapply in lieu of requesting review of the determination."

These provisions exist because SSA used to regularly tell people that they need not appeal their reconsideration decisions, they could simply reapply at some point. In the Disability Insurance program, this can result in ineligibility due to loss of insured status. In addition, in both SSI and DI, this will mean loss of benefits for the period based on the first application until the second

application is filed. It is not acceptable for SSA to be incorporating this justification into the NPRM as a basis for explaining that, if a person falls into the various new procedural cracks being created, it is not a problem, because they can always reapply. That is incomplete and misleading.

Conclusion

While justice delayed can be justice denied, justice expedited also can result in justice denied. At the end, the goal is to have the right decision, not just a legally defensible decision. And, to be fair, decisions cannot be based on a collection of technicalities such as failure to file evidence by a specific time or failure to file a detailed list of issues related to an appeal — people need to know that their claims were fairly considered based on all of the evidence, medical and otherwise.

As organizations representing people with disabilities, we strongly support efforts to reduce unnecessary delays for claimants and to make the process more efficient. However, these changes should not affect the fairness of the process to determine a claimant's entitlement to benefits. As noted above, the CCD Task Force will submit more detailed analysis and recommendations to Commissioner Barnhart prior to the close of the public comment period and we will submit those comments to the Subcommittees, also.

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