



COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 11, 2014

STATEMENT FOR THE RECORD

**CAROLYN W. COLVIN
ACTING COMMISSIONER
SOCIAL SECURITY ADMINISTRATION**

**TESTIMONY ON CAROLYN W. COLVIN, ACTING COMMISSIONER
SOCIAL SECURITY ADMINISTRATION
REGARDING OVERSIGHT OF FEDERAL DISABILITY PROGRAMS**

**BEFORE THE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
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Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Thank you for the opportunity to discuss the role of administrative law judges (ALJs) in the disability appeals process. My name is Carolyn Colvin, and I am the Acting Commissioner of the Social Security Administration (SSA). We are committed to effectively administering the Federal benefit programs for which we are responsible, so that they remain strong for those Americans who need them. Today, I will begin by briefly discussing the vital programs that we administer.

Introduction

We administer the Old-Age, Survivors, and Disability Insurance program, commonly referred to as “Social Security,” which provides monthly benefits to insured workers and their families at age 62, death, and disability. Social Security provides a financial safety net for millions of Americans. Few programs touch as many lives. We also administer the Supplemental Security Income (SSI) program, funded by general revenues, which provides cash assistance to persons with very limited means who are aged, blind, and disabled, as defined in the Social Security context.

Accordingly, our responsibilities are immense. To illustrate, in fiscal year (FY) 2013 we performed the following activities for people who come to us for help: paid over \$850 billion to more than 65 million beneficiaries, of whom about 15 million received approximately \$187 billion in benefits under our disability programs (About 3 million of our beneficiaries receive benefits under more than one program); handled over 53 million transactions on our National 800 Number Network; received over 68 million calls to field offices nationwide; served more than 43 million visitors in over 1,200 field offices nationwide; completed nearly 8 million claims for benefits and nearly 794,000 hearing dispositions; and completed 429,000 full medical continuing disability reviews (CDR).

Handling all these responsibilities requires adequate and sustained funding. For the three years before FY 2014, we received an average of nearly a billion dollars less than what the President requested for our administrative budget. That level of underfunding has presented us with significant challenges in providing the public the level of service that it deserves. For example, while we made great strides from FY 2009 through FY 2012 in reducing the time people wait for

a hearing decision, since FY 2012 the average waiting time has increased from 353 days in FY 2012 to 411 days this fiscal year.

The Disability Insurance Program

I would also like to highlight a few aspects of the Disability Insurance (DI) program.

- First, based on the definition of disability that Congress established, an insured claimant is eligible only if he or she cannot engage in any substantial work because of a medically determinable physical or mental impairment that has lasted or is expected to last for at least one year or to result in death. The DI program does not provide short-term or partial disability benefits.
- A claimant cannot receive disability benefits simply by alleging the existence of pain or a severe impairment. We require objective medical evidence to show the claimant has a medical impairment that: (1) could reasonably be expected to produce the pain or other symptoms alleged, and (2) meets our disability requirements when considered with all other evidence.
- The DI program is a social insurance program, under which workers earn coverage for benefits by working and paying taxes on their earnings. Thus, DI benefits are earned benefits.
- This year, workers who have been found to be disabled in the Social Security context received, on average, a little less than \$1,150 in DI benefits per month, which is not much above the current poverty income level for an individual of about \$12,000 per year.
- Over the past 20 years, there has been significant growth in the DI program. Our Chief Actuary has explained that long-term DI program growth was predicted many years ago and is driven, primarily, by the aging of the baby boom generation and the fact that more women have joined the labor force and have become eligible for benefits.

History of Our ALJ Corps

We have nearly 75 years of experience in administering the hearings process. Since the passage of the Social Security Amendments of 1939, the Social Security Act (Act) has required us to hold hearings to determine the rights of individuals to old age and survivors' insurance benefits. Initially, "referees" under the direction of the Appeals Council held hearings and issued decisions. Later, after Congress passed the Administrative Procedure Act (APA) in 1946, these referees became known as "hearing examiners" and are now known as ALJs.

Over the years, the size of our ALJ corps has grown in correlation to our workloads. We employ just over 1,400 full and part-time ALJs. This year, we plan to hire additional ALJs; these new ALJs will bring our corps to almost 1,500. The improved process we have used to hire ALJs in recent years makes me confident that our new hires will be proficient in their jobs and will join the vast majority of their colleagues in meeting the highest professional and ethical standards.

ALJ's Role during a Hearing

Before describing the ALJs' role during a hearing, let me briefly describe the disability claims appeals process set forth in the Act or in our regulations. A claimant who disagrees with:

1. an *initial* determination may request *reconsideration* of the claim within 60 days of receiving the notice of the initial determination;
2. a *reconsideration* determination may request a hearing before an *ALJ* within 60 days of receiving the reconsideration notice;
3. an *ALJ's decision* may request review by our *Appeals Council* within 60 days of receiving the ALJ's hearing decision; or
4. our *final administrative decision* may appeal to the U.S. District Court.

Generally, the first time a claimant appears in person before a decision maker is at the hearing level. In addition, the evidence before the ALJ is likely more extensive, and claimants will have aged more than a year during which time their medical condition may have worsened or they may have developed new impairments. Sometimes, these changed factors allow the ALJ or attorney advisor to issue a favorable decision on the record. However, in the vast majority of cases, there is a hearing before an ALJ. At the hearing, the ALJ gathers additional evidence and calls vocational and medical experts, as needed. Claimants swear an oath to the ALJ that they will tell the truth.

Following the hearing, the ALJ may take additional steps to complete the record, such as ordering a consultative medical examination. The ALJ considers all of the evidence in the file, including evidence not available during the initial determination, as well as the hearing testimony when making a decision. The ALJ decides the case based on a preponderance of the evidence. The ALJ decides the case *de novo* and is not bound by the determinations made at the initial or reconsideration levels. If the claimant does not appeal, the ALJ's decision becomes the final decision of the agency. A claimant who disagrees with the ALJ's decision may request review of the decision by the Appeals Council (AC). The AC also retains the authority to review any ALJ decision on its own motion.

There is a common perception that most allowances for disability benefits occur at the ALJ level. This perception is untrue. For example, based on the longitudinal tracking of 2.6 million disability claims filed in calendar year 2008, approximately 76 percent of all allowances occurred at the initial or reconsideration levels.

Quality Initiatives

The quality of our decisions is a paramount concern for the agency, the claimants, Congress, and the taxpayer. It is our obligation to provide every person who comes before our agency—regardless of where they live or the judge they draw, a timely, legally-sound, policy-compliant decision. We took aggressive steps to institute a more balanced quality review in the hearings

and appeals process. Our first effort in this area was to develop more extensive data collection and management information for the Office of Disability Adjudication and Review (ODAR). Because the Office of Appellate Operations (OAO) handles the final level of administrative review, it has a unique vantage point to give feedback to decision and policy makers. OAO developed a technological approach to harness the wealth of information it collects, turning it into actionable data. These new tools permitted the OAO to capture a significant amount of structured data concerning the application of agency policy in hearing decisions.

Using these data, we provide feedback on decisional quality, giving adjudicators real-time access to their remand data. We are creating better tools to provide individual feedback for our adjudicators. One such feedback tool is "How MI Doing?" This resource not only gives ALJs information about their AC remands, including the reasons for remand, but also information on their performance in relation to other ALJs in their office, their region, and the nation. We have developed training modules related to the most common reasons for remand that are linked to the "How MI Doing?" tool. ALJs are able to receive immediate training at their desks that is targeted to the specific reasons for the remand. Data driven feedback informs business process changes that reduce inconsistencies and inefficiencies, and simplify rules.

In FY 2010, OAO created the Division of Quality (DQ) to focus specifically on improving the quality of our disability process. While AC remands provide a quality measure on ALJ denials, prior to the creation of DQ, we did not have the resources to look at ALI allowances. Since FY 2011, DQ has been conducting pre-effectuation reviews on a random sample of ALJ allowances. Federal regulations require that pre-effectuation reviews of ALJ decisions be selected at random or, if selective sampling is used, may not be based on the identity of any specific adjudicator or hearing office. Beginning next fiscal year, DQ will also have the capability to selectively sample decisions, which will allow us to prioritize our resources on the most error prone policy areas when selecting cases for pre-effectuation review.

DQ also performs post-effectuation focused reviews looking at specific issues. Subjects of a focused review may be hearing offices, ALJs, representatives, doctors, and other participants in the hearing process. The same regulatory requirements regarding random and selective sampling do not apply to post-effectuation focused reviews. Because these reviews occur after the 60-day period a claimant has to appeal the ALJ decision, they do not result in a change to the decision. However, if we determine after a focused review that there are issues relating to an ALJ's non-compliance with policy and that a beneficiary may not be disabled, we can request that such a beneficiary be subject to a CDR. Our ability to perform CDRs, however, is limited based on the funding we receive from Congress.

The data collected from these quality initiatives identify for us the most error-prone provisions of law and regulation, and we use this information to design and implement our ALJ training efforts. To ensure that all of our ALJs comply with law, regulations, and policies, we provide considerable training including both new and supplemental ALJ training.

Since instituting all of the enhanced quality review initiatives that I just outlined, we have observed that the number of judges with extremely high and low allowance rates has dropped. While we do not set target allowance rates for our judges and always emphasize that a judge's

allowance rate is not a proxy measurement of his or her policy compliance, we nonetheless believe that this phenomenon is a likely indicator of better, more standardized decision-making in our hearings process.

Timeliness is an element of quality. We have set an expectation that ALJs issue 500-700 decisions a year, a range that is consistent with the actual number of cases performed by a majority of judges. However, we have never required an ALJ to do 500-700 cases per year. Our ALJs know that, when they accept an appointment to serve the American public, they must provide timely and quality service, and the public has every right to expect them to work hard. At the same time, judges should not decide too many cases because quality could suffer as a result. Therefore, we limit the assignment of new cases to no more than 840 cases annually.

Management Oversight

As I mentioned above, most agency employees who receive feedback through tools like “How MI Doing?” welcome the opportunity to improve their skills. Very few of our ALJs underperform, do not apply the law fairly, or engage in misconduct. The vast majority of our ALJs are conscientious, hard-working, and take their responsibilities seriously.

We manage our ALJ corps in accordance with the APA, which contains provisions that ensure qualified decisional independence for our ALJs and places certain limits on the performance management of our ALJs. For example, ALJs are exempt from performance appraisals and cannot receive awards based on performance.

Nevertheless, we can, and have, taken steps to ensure that ALJs who refused to do their jobs properly or who otherwise betrayed the public trust would be held accountable for their performance and conduct. Generally and as appropriate, an informal feedback process works, but when it does not, management directs an ALJ to follow the law, regulations, and agency policies. ALJs rarely fail to comply with these directives. In those cases where the ALJ did not comply and where appropriate, we pursued appropriate corrective action.

In the past several years, it has been necessary to seek removal or suspension of a number of ALJs. The agency strives to ensure that our ALJs adhere to the high standards expected of them, recognizing at the same time that we cannot and would not attempt to influence a decision in any particular case. When it is necessary due to an ALJ’s actions to seek the removal of an ALJ from service, the agency must complete a lengthy MSPB administrative process that lasts years and can consume over a million taxpayer dollars. Unlike disciplinary action for other civil servants, the law requires that ALJs receive their full salary and benefits until the case is finally decided by the full MSPB—even though the ALJ’s conduct made it impossible for the agency to allow the ALJ to continue deciding and hearing cases or to interact with the public. We remain open to exploring options to address and improve these matters, while continuing to provide the best service to the American public.

CDRs in the FY 2015 President's Budget

Tight budgets have affected our ability to timely conduct vital program integrity work, which helps ensure only those persons eligible for benefits continue to receive them. There is a long-standing adage in our agency—the right check to the right person at the right time. Delivering on this statement means that we are demonstrating our stewardship and preserving the public's trust in our programs.

To this end, we perform medical CDRs and age 18 redeterminations to ensure only those beneficiaries who remain disabled continue to receive monthly benefits. Although we estimate that we save the Federal government on average \$9 per dollar spent on CDRs in the first 10 years after doing medical CDRs, we have a backlog of 1.3 million CDRs because our funding levels have not allowed us to keep up with all scheduled CDRs. Despite our limited funding in the last few years, we have continued to increase the number of medical CDRs we conduct each year. In FY 2014, Congress appropriated the level of funding approved in the Budget Control Act of 2011 (BCA), which allows us to further expand our capacity to complete more of our cost-effective CDRs and begin to work down our backlog. We completed 429,000 full medical CDRs in FY 2013, and we plan to complete 510,000 full medical CDRs in FY 2014. We are aggressively hiring and training employees in FY 2014 so that we are able to complete substantially more full medical CDRs in FY 2015.

The President's Budget for FY 2015 once again requests the full BCA level of program integrity funding (\$1.396 billion). With this funding, we plan to complete 888,000 full medical CDRs

Starting in FY 2016, the budget proposes to repeal the discretionary cap adjustments enacted in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the BCA, for SSA and instead provide a dedicated, dependable source of mandatory funding for SSA to conduct CDRs, as well as SSI non-medical redeterminations. The proposal includes the creation of a new account called Program Integrity Administrative Expenses, which will reflect mandatory funding for SSA's program integrity activities. The mandatory funding will enable us to work substantially down a backlog of 1.3 million medical CDRs.

As a result of the discretionary funding in 2015 and the mandatory funding in 2016 through 2024, according to the President's FY 2015 Budget we will recoup a net Federal savings of nearly \$35 billion in the 10-year window and additional savings in the out-years.¹ These savings include Medicare and Medicaid program effects.

Conclusion

Since 1957, Social Security disability benefits have become a part of the American fabric by providing a vital safety net for those Americans who make up the most vulnerable segment of society. DI beneficiaries are your neighbors, veterans, and perhaps even family members.

¹ Office of Management and Budget. "Analytical Perspectives, Budget of the United States Government, Fiscal Year 2015." Washington: Government Printing Office, 2014, p. 119.

Making disability decisions for Social Security programs is a challenging task. Our highly-trained disability adjudicators follow a complex process for determining disability according to the requirements of the law as designed by Congress. The vast majority of our adjudicators are dedicated public servants who strive to make the right decision and to be good stewards of the trust funds, and we are committed to helping them do their jobs effectively.

We thank you for your interest in our appeals process. We also ask for your support for the President's budget request, which will provide us with funding to continue to improve our hearings process, improve the integrity of our disability programs, and reduce improper payments.

Again, thank you for the opportunity to testify today. I will do my best to answer any questions you may have.



Carolyn W. Colvin
Acting Commissioner of Social Security

On February 14, 2013, Carolyn W. Colvin became the Acting Commissioner of Social Security. Prior to this designation, she served as the Deputy Commissioner, having been confirmed by the United States Senate on December 22, 2010 as President Obama's nominee. In addition to her role as the Acting Commissioner of Social Security, Ms. Colvin serves as a Trustee to the Social Security Board of Trustees.

Throughout her career, Ms. Colvin has managed programs that help people with their healthcare and financial needs. She previously held key executive positions at Social Security Headquarters: Deputy Commissioner for Policy and External Affairs (1994–1996), Deputy Commissioner for Programs and Policy (1996–1998), and Deputy Commissioner for Operations (1998–2001).

Prior to returning to SSA, Ms. Colvin was the Director of Human Services for the District of Columbia (2001-2003); the Director of the Montgomery County Department of Health and Human Services (2003-2007); the Chief Executive Officer of AMERIGROUP Community Care of the District of Columbia (2007–2008); and, the Special Assistant to the Secretary of Maryland's Department of Transportation (2009-2011). In addition, Ms. Colvin served as the Secretary of Maryland's Department of Human Resources (1989-1994).

Ms. Colvin has received numerous awards and recognition for her managerial expertise and creativity, including Maryland's Top 100 Women Award from the Daily Record (2005) and the Women of Achievement Award from Suburban Maryland Business and Professional Women (2005). She has served on a variety of boards and commissions, including the National Committee to Preserve Social Security and Medicare.

Ms. Colvin earned her graduate and undergraduate degrees in business administration from Morgan State University. Additionally, she completed the Senior Executives in State and Local Government Program at Harvard University, the Maryland Leadership Program, and the Greater Baltimore Leadership Program. Ms. Colvin is from Maryland and currently resides in Anne Arundel County. She has one son and six grandchildren.