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## Social Security Administration Disability Discrepancies: The Debate Between Street-Level Bureaucrats and Administrative Law Judges

Erica M. Woehl

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# SOCIAL SECURITY ADMINISTRATION DISABILITY DISCREPANCIES: THE DEBATE BETWEEN STREET-LEVEL BUREAUCRATS AND ADMINISTRATIVE LAW JUDGES

ERICA M. WOEHL\*

## ABSTRACT

In practice, attorneys know that it is hard to get awards at the initial stages of the Social Security application process, but the chances of receiving benefits increase once the applicant gets a hearing in front of an administrative law judge. This is common practice and typically how the system works, but *should* it be how the system works? The Social Security Administration's administration of benefits differs both vertically within the disability adjudicative system and horizontally in different regions, states, and judicial districts. This article explores a study of how role discretion, based on hierarchical position in the Social Security Administration's application and appeals process, affects the overall success of applicants. More specifically, the study concentrates on a state's political control, workloads, and a state's financial contributions to the benefit award program and the effects of these factors on the percent of awards administrative law judges are responsible for granting.

After running an Ordinary Least Squares regression, the study found that overall state political controls, workload demands, and a state's financial contribution to the benefit awards program have an effect on the percent of awards administrative law judges are responsible for granting. Particularly, the study found that the initial workload of street-level bureaucrats has a negative relationship with the percent of awards administrative law judges are responsible for granting. Furthermore, the study found that the workload of administrative law judges has a positive relationship with the percent of awards administrative law judges are responsible for granting. This study therefore suggests that workload may be contributing to the discrepancies in the Social Security Administration's disability awards process.

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\* Erica M. Woehl graduated from the University of North Dakota with a Juris Doctorate and a Master of Public Administration in 2014. The underlying research in this article was conducted for her final independent study before receiving her Master's degree. Erica gives the most immediate thanks to the Honorable Alvin O. Boucher for the inspiration and to Dr. Andy Hultquist for his guidance and assistance.

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## I. INTRODUCTION

Ask a social security disability attorney what an applicant’s chances are for receiving benefits and he will tell you, “We just have to keep appealing and request a hearing.” In practice, attorneys know that it is hard to get awards at the initial stages of the application process, but the chances of receiving benefits increase once the applicant gets a hearing in front of an administrative law judge (“ALJ”). This is common practice and typically how the system works, but *should* it be how the system works? Is this discrepancy a strategy by the Social Security Administration (“SSA”) to award less benefits or is something within the administrative process broken?

The Social Security Disability application and appeals process can be broken down into five stages.<sup>1</sup> The first two stages, the initial determination and the reconsideration, are handled by bureaucratic level decision makers.<sup>2</sup> The initial determination and the reconsideration both follow a rigid template of questions in order to make the decision.<sup>3</sup> The third stage, an administrative hearing conducted by an ALJ, allows for a bit

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1. Hugo Benítez-Silva, Mosche Buchinsky & John Rust, *How Large Are the Classification Errors in the Social Security Disability Award Process?* 9 (Nat’l Bureau of Econ. Research, Working Paper No. W10219, Jan. 2004), <http://www.nber.org/papers/w10219>.

2. *Id.*

3. *Id.* at 7-8.

more flexibility and discretion.<sup>4</sup> The applicant then has the chance to appeal first to a review council and lastly to the federal courts.<sup>5</sup>

The Social Security Administration is inconsistent in its application of the law, both vertically within the disability adjudicative system and horizontally in different regions and judicial districts.<sup>6</sup> If decisions can vary so greatly from the initial determinations to the appeals level, and differently from state to state, what does that say about the discretionary roles of the employees? In order to answer some of these questions, this study explores how role discretion, based on hierarchical position in the Social Security Administration's application and appeals process, affects the overall success of applicants.

Research in this area has noted the disparity in the decisions among differing states and between different adjudicating levels;<sup>7</sup> however, no research has pointed to why such disparities exist. These disparities raise an alarming question: Why is there such a discrepancy among the initial stages of determination and the determinations by an ALJ? In an attempt to answer this question, data was compiled from the Social Security Administration and organized by state in order to determine the percentage of the overall appeals rate in each state.<sup>8</sup> The unit of analysis is each state. The study considered the roles state political control, state Social Security funding and administration, and caseload demands have on applicant appeal success rates.

If the reasons for these disparities are noted, then they can be fixed in order to better apply the laws more consistently. Furthermore, if the initial determination or subsequent reconsideration is handled properly, then it saves the Social Security Administration time and money. Implementing new policies nationwide would solidify a standard by which benefits can be distributed equally among states. In order to better understand the significance of answering these questions, this article will briefly discuss the structure of the Social Security Disability's application and appeal process in Part II. Part III will then discuss the previous research in this area. Finally, Parts IV and V will outline the methodology, findings, analysis, and conclusion.

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4. *See id.* at 9.

5. *Id.*

6. Paul R. Verkuil & Jeffrey S. Lubbers, *Alternative Approaches to Judicial Review of Social Security Disability Cases*, 55 ADMIN. L. REV. 731, 760 (2003).

7. *See discussion infra* Part III.

8. *See infra* Table A1.

## II. THE SOCIAL SECURITY ADMINISTRATION

The Social Security Act was amended in 1956 to provide cash benefits to former workers who could demonstrate their inability to continue gainful employment.<sup>9</sup> This amendment created two new programs: the Social Security Disability Insurance (“SSDI”) program and the Supplemental Security Income (“SSI”).<sup>10</sup> To qualify for SSDI, recipients must have paid into Social Security a minimum amount determined by their age and employment history, and for SSI, recipients must meet a means test.<sup>11</sup> Both programs are federally funded, and the federal government determines the rules for eligibility of the benefits.<sup>12</sup>

After applying for benefits, a person’s application is sent to one of the fifty-four Disability Determination Services (“DDS”) centers.<sup>13</sup> After filing an application, applicants will receive an initial determination.<sup>14</sup> If the applicant receives an unfavorable decision, he can make a request for reconsideration.<sup>15</sup> Initial determinations and requests for reconsideration determinations are both made by the same DDS, which are state-level bureaucracies.<sup>16</sup>

These first two stages use a five-step determination process to test if applicants qualify for benefits.<sup>17</sup> The first step is to determine whether or not the person has engaged in substantial gainful activity subsequent to the claimed onset of the disability.<sup>18</sup> If not, the street-level bureaucrat explores whether or not the applicant is severely impaired.<sup>19</sup> If the applicant is severely impaired, the third step consists of a determination of whether the applicant’s impairment meets the criteria of 1 of over 100 standardized impairments.<sup>20</sup> The last two steps ask if the applicant has a capacity to do

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9. Lael R. Keiser, *State Bureaucratic Discretion and the Administration of Social Welfare Programs: The Case of Social Security Disability*, 9 J. PUB. ADMIN. RES. & THEORY 87, 90 (1999).

10. *Id.*

11. Lael R. Keiser, *Understanding Street-level Bureaucrats’ Decision Making: Determining Eligibility in the Social Security Disability Program*, 70 PUB. ADMIN. REV. 247, 248 (2010).

12. RALPH DOLGOFF, DONALD FELDSTEIN & LOUISE SKOLNIK, *UNDERSTANDING SOCIAL WELFARE: A SEARCH FOR SOCIAL JUSTICE* 202-203 (Linda W. Witzling & Susan L. Alkana eds., 3d ed. 1993).

13. Hugo Benítez-Silva, Moshe Buchinsky, Hiu Man Chan, John Rust & Sofia Sheidvasser, *An Empirical Analysis of the Social Security Disability Application, Appeal, and Award Process*, 6 LABOUR ECON. 147, 148 (1999).

14. 20 C.F.R. § 422.140.

15. *Id.*

16. Benítez-Silva et al., *supra* note 1, at 2.

17. *Id.* at 7-8.

18. *Id.* at 8.

19. *Id.*

20. *Id.*

his prior work or if he has the capacity to do any other work.<sup>21</sup> If the determination is made that the applicant has the capacity to do his prior work or some other work, he will be denied benefits.<sup>22</sup>

After a denial at the reconsideration stage, the applicant may request a hearing.<sup>23</sup> An ALJ will either allow the hearing and make a determination on the matter or deny the request for a hearing.<sup>24</sup> The ALJ will base his “decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.”<sup>25</sup> Applicants, as a “party to a hearing decision or dismissal, may request a review of such action by the Appeals Council.”<sup>26</sup> The Appeals Council will either deny the request for review, remand the case back to the ALJ, or make a determination itself.<sup>27</sup> Lastly, the applicant may file a lawsuit against the Social Security Administration, or its state counterpart, in federal court.<sup>28</sup>

### III. LITERATURE REVIEW

Prior research in this area has noted a trend of inconsistencies both vertically and horizontally within the SSA disability system. Benítez-Silva, Buchinsky, and Rust found that only 38% of applicants are accepted at the initial determination.<sup>29</sup> They also found that only half of the applicants that were denied at the initial stage request a reconsideration, and only 16% are awarded benefits at the reconsideration stage.<sup>30</sup> Of the applicants that appeal to an ALJ, approximately 59% are awarded benefits.<sup>31</sup> Benítez-Silva, Buchinsky, Chan, Rust, and Sheidvasser found that the appeals process “increases [an applicant’s] award probability from 46% to 73%.”<sup>32</sup> These percentages are based upon federal application numbers and responses from a Health and Retirement Survey, a national longitudinal survey.<sup>33</sup> This research not only demonstrates the disparity among the SSA vertically, but it also shows the importance of the appeal itself.

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21. *Id.* at 8-9.

22. *Id.*

23. 40 C.F.R. § 422.203.

24. *Id.* § 422.203(c).

25. *Id.*

26. *Id.* § 422.205.

27. See Lael R. Keiser, *Street-level Bureaucrats, Administrative Power and the Manipulation of Federal Social Security Disability Programs*, 1 ST. POL. & POL’Y Q. 144, 160 n.1 (2001).

28. *See id.*

29. Benítez-Silva, et. al, *supra* note 1, at 9.

30. *Id.*

31. *Id.*

32. Benítez-Silva et al., *supra* note 13, at 147.

33. *Id.* at 153.

The SSA functions through many state bureaucracies.<sup>34</sup> Other research in this area has focused on the disparities among the award processes in the SSA horizontally, focusing specifically on states and regions. Lael R. Keiser found that variation exists among initial determinations made by different states.<sup>35</sup> The amount of discretion variation differs among street-level bureaucrats and ALJs.<sup>36</sup> These variations indicate that the implementation of the federal rules and the award process are not uniform. However, as Max Weber, a German philosopher, sociologist, and political economist,<sup>37</sup> explained, it is a “basic principle of bureaucratic administration . . . that implementation should be uniform.”<sup>38</sup> It is clear that the SSA is inconsistent in its application of the law, both vertically within the disability awards system and horizontally in different regions and judicial districts.<sup>39</sup> These disparities have been prevalent for years, but the reason for such variations has not yet been pinpointed.

#### A. CONCENTRATION ON STREET-LEVEL BUREAUCRATS

After noting these disparities, researchers have concentrated on the implementation process at the street-level. In the SSA, initial disability determinations are made by street-level bureaucrats known as DDS workers.<sup>40</sup> Michael Lipsky defined street-level bureaucrats as “public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work.”<sup>41</sup> DDS decisions “also vary widely across states at a given point in time, again in a manner that is difficult to ascribe entirely to differences in the characteristic of the applicant pool.”<sup>42</sup> Keiser explains that while the DDS application stages have a strict set of eligibility requirements, “state examiners retain considerable discretion because of the nature of [the SSA]

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34. See Benitez-Silva et. al, *supra* note 1, at 2.

35. Keiser, *supra* note 27, at 149.

36. See *id.* at 148.

37. Max Weber, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/weber/>.

38. Helena O Stensöta, *Political Influence on Street-level Bureaucratic Outcome: Testing the Interaction Between Bureaucratic Ideology and Local Community Political Orientation*, 22 J. PUB. ADMIN. RES. & THEORY 553, 553 (2012) (citing MAX WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION (Talcott parsons, ed. and trans., A.M. Henderson, trans., N.Y. Free Press 1964) (1947)).

39. Verkuil & Lubbers, *supra* note 6, at 760.

40. Keiser, *supra* note 27, at 148.

41. Michael Lipsky, *Street-level Bureaucracy: The Critical Role of Street-level Bureaucrats*, in CLASSICS OF PUBLIC ADMINISTRATION 412, 419 (Jay M. Shafritz & Albert C. Hyde eds., 2012).

42. Benítez-Silva et al., *supra* note 1, at 2.

programs.”<sup>43</sup> “The federal government has tried to control the decisions of disability examiners by creating binding rules, but this has been difficult because these bureaucrats work for the states” and retain a significant amount of discretion.<sup>44</sup> Therefore, because the street-level bureaucrats have the power to determine for which of the many programs a claimant is eligible, the “elected officials have an incentive to manipulate eligibility so that as many claimants as possible qualify” for the state’s least expensive program.<sup>45</sup>

Keiser’s 1999 study of the Social Security Administration’s DDS workers explored “the impact of state level environmental characteristics on the use of discretion.”<sup>46</sup> Overall, Keiser concluded that “professional norms play a large role in directing the ways that street-level bureaucrats use their discretion” and “[w]hile the bureaucracy is professional, it is also responsive to local political concerns.”<sup>47</sup> In short, Keiser concluded that “disability rates at the state level are a function of the economic environment (unemployment rate), the task environment (aged population and percent of employees working in manufacturing), and the political environment (Democratic control of state legislatures).”<sup>48</sup> Therefore, “it is possible that street-level bureaucrats at the state level try to use the program strategically but that their efforts are thwarted during the federal appeals process.”<sup>49</sup> This is especially true given the relatively high reversal rates by ALJs.<sup>50</sup>

Keiser’s subsequent 2001 study further suggests that “given the discretionary nature of the disability decisions, it is not surprising that variation exists . . . among the states and within the same state from year to year.”<sup>51</sup> Keiser found that “street-level bureaucrats respond to the fiscal incentives that exist for state government to manipulate access to these programs.”<sup>52</sup> Overall, her findings suggest “that when state governments have a financial interest in whether applicants are given access to a program, street-level state bureaucrats take these interests into account in

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43. Keiser, *supra* note 27, at 148.

44. *Id.*

45. *Id.*

46. Keiser, *supra* note 9, at 87.

47. *Id.*

48. *Id.* at 100. It is important to note that Keiser’s statistics included the decisions from ALJs, the Appeals Council, the federal district court, as well as the DDS worker’s decisions. *Id.* at 102.

49. *Id.*

50. Benítez-Silva et al., *supra* note 13, at 152.

51. Keiser, *supra* note 27, at 149.

52. *Id.* at 158.



their decision making.”<sup>53</sup> More specifically, Keiser found that “the governor’s party does not influence award rates” because the “programs associated with Social Security tend to be supported by both parties more than other anti-poverty programs.”<sup>54</sup> Keiser also found that caseload demand affects the award rate because “high demand reduces acceptance rates due to resource shortages.”<sup>55</sup>

Keiser’s most recent study, produced in 2010, begins to delve into the relationship between the vertical hierarchical actors within the SSA.<sup>56</sup> In seeking to understand the effect of face-to-face interactions on the award rate, Keiser also studied “the impact of street-level bureaucrats’ individual characteristics, such as their ideology, adherence to agency goals, attitude towards clients, information about other bureau actors, and decision-making speed, on how generously [DDS workers] apply eligibility rules.”<sup>57</sup> Most significantly, Keiser noted, “Examiners with knowledge of how many cases administrative law judges overturn report about [six] percent higher allowance rates than those without this knowledge.”<sup>58</sup> This indicates that simple information sharing about the ALJ reversal rate would enhance consistency among agencies.<sup>59</sup>

#### B. CONCENTRATION ON ADMINISTRATIVE LAW JUDGES

Other research has concentrated on or even blamed ALJs for these discrepancies. For example, Richard Pierce argues that ALJs should be eliminated because of the disparity among the initial determinations and the ALJs’ reversal ratings.<sup>60</sup> Pierce suggests that greater accuracy and consistency would be achieved by relegating virtually all decision making to state agency DDS’s paper review process.<sup>61</sup> However, as already noted, “[t]here are dramatic and unexplained variations among the state agencies

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53. *Id.*

54. *Id.* at 157.

55. *Id.*

56. Keiser, *supra* note 11, at 247.

57. *Id.* at 248-54.

58. *Id.* at 253.

59. *Id.* Of note, here, Keiser begins to look at the interaction between ALJ and DDS workers. However, overall Keiser’s study concentrates on how frontline workers implement policy when they lack face-to-face contact with the applicants, and it spends very little time delving into the relationship between ALJs and DDS workers.

60. Richard J. Pierce, Jr., *What Should We Do About Social Security Disability Appeals? Administrative Law Judges, Overruling SSA Rejections of Disability Claims, Contribute Heavily to Federal Spending*, 34 REGULATION 34, 34, 39-40 (2011).

61. *Id.*

that handle initial and reconsideration decisions.”<sup>62</sup> For example, “in 2010, the DDS for Mississippi granted initial claims in 24.9% of cases,” compared to New Hampshire’s DDS who granted initial claims in 49.5% of the cases.<sup>63</sup> Others believe that the switch to an all street-level review process would not increase accuracy and consistency because “[s]tate agency adjudicators handling the initial and reconsideration disability determinations have considerably less training, education, and relevant experience for the task than federal ALJs.”<sup>64</sup>

Even though judges and street-level bureaucrats often compose the same welfare system, they have very different roles.<sup>65</sup> A Social Security ALJ must function within the framework of the SSA by following regulations, appropriate precedents, and agencies policies. However, “[d]ecisions rendered by the administrative law judges are governed in large part by professional integrity, competency, and a sense of responsibility.”<sup>66</sup> Hayes explains that an ALJ’s position is unique because “he has a dual responsibility to safeguard the interests of both the claimant and the Federal Government.”<sup>67</sup> “This means that [the ALJ] is duty bound to see that benefits are paid only to claimants who meet the requirements set out in the law.”<sup>68</sup>

In contrast to much of Keiser’s work on street-level bureaucrats, Vicki Lens seeks to understand the ways in which ALJs exercise discretion and how it affects the adjudication of disputes between Social Security frontline workers and applicants.<sup>69</sup> Lens compares frontline workers and ALJs.<sup>70</sup> She explains that frontline decision makers exercise very little discretion because they focus “on processing information accurately, efficiently, and consistently.”<sup>71</sup> In contrast, ALJs “have the autonomy, professional knowledge, and skills to make individualized and complex determinations.”<sup>72</sup> ALJs are unique because not only are they judges, they are also

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62. Jon C. Dubin & Robert E. Rains, *Scapegoating Social Security Disability Claimants (and the Judges Who Evaluate Them)*, AM. CONST. SOC’Y FOR LAW AND POL’Y ISSUE BRIEF, Mar. 2012, at 1, 4.

63. *Id.*

64. *Id.*

65. Vicki Lens, *Judge or Bureaucrat? How Administrative Law Judges Exercise Discretion in Welfare Bureaucracies*, 86 SOC. SERV. REV. 269, 271 (2012).

66. Gerald Hayes, *Social Security Disability and the Administrative Law Judge*, 17 A.F. L. REV. 73, 76 (1975).

67. *Id.*

68. *Id.*

69. Lens, *supra* note 65, at 269.

70. *Id.* at 269-70.

71. *Id.* at 270.

72. *Id.*

bureaucratic actors who perform within a bureaucracy.<sup>73</sup> Therefore, Lens tries to understand “how administrative law judges exercise the discretion granted them by their professional training and their role in the bureaucracy.”<sup>74</sup>

Lens was not the first to focus on ALJs’ role in the awards process. As early as 1975, Champagne and Danube sought to understand the inconsistencies among the reversal rates of ALJs by exploring “the relationship between administrative law judges’ characteristics and their decisions.”<sup>75</sup> They sent out questionnaires to ALJs to determine whether background and attitudinal variables had a role in administrative judicial decision making.<sup>76</sup> However, the background and attitude variables showed little correlation with the difference in reversal rates.<sup>77</sup> Most significantly for this study, Champagne and Danube found that there was no correlation between caseload and reversal rates.<sup>78</sup> However, they did note that “[p]erhaps the number of cases handled by an administrative law judge is still manageable and allows him time to consider seriously all of his decisions.”<sup>79</sup>

Champagne and Danube argue that one “explanation of the smaller role of background and attitude is that administrative law judges are extremely well qualified.”<sup>80</sup> “[T]he role of patronage politics and other political variables” is not as important in the selection of ALJs as it is for other judges;<sup>81</sup> therefore, this factor, along with the qualifications of ALJs, results in a “more uniformly high degree of professionalism of administrative law judges[, which] may account for the low correlation of reversal rates with background and attitude variables.”<sup>82</sup> They suggest that “[a]ny blatant bias measured by such variables as party or religious affiliation possibly can be overcome by the professionalism of administrative law judges.”<sup>83</sup> Currently, “federal ALJs must be lawyers for at least seven years, pass an examination, and then score competitively well after a series of interviews to obtain one of these highly coveted jobs.”<sup>84</sup>

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73. *Id.*

74. *Id.*

75. Anthony Champagne & Amos Danube, *An Empirical Analysis of Decisions of Administrative Law Judges in the Social Security Disability Program*, 64 GEO. L.J. 43, 45 (1975).

76. *Id.* at 45-46.

77. *Id.* at 50.

78. *Id.*

79. *Id.*

80. *Id.* at 50.

81. *Id.*

82. *Id.* at 50-51.

83. *Id.* at 51.

84. Dubin & Rains, *supra* note 62, at 4.

Building on Champagne and Danube's ideals of the professional judge, Vicki Lens's recent work categorizes the judges, seeking "to understand how administrative law judges exercise the discretion granted them by their professional training and their role in the bureaucracy."<sup>85</sup> Lens claims that ALJs often follow one of two approaches.<sup>86</sup> The "bureaucratic approach" is when judges "use their discretion to replicate the norms and expectations of bureaucratic decision making."<sup>87</sup> On the other hand, "judges may reinforce their designated role as adjudicators of disputes and may safeguard against arbitrary state actions" by using the "adjudicator approach."<sup>88</sup> Judges' professional training allows them to scrutinize an agency's practice and procedures.<sup>89</sup> Bureaucratic approach judges "predominately choose to align themselves with the agency whose decisions they review."<sup>90</sup> In contrast, adjudicator approach judges "continually challenge and scrutinize the agency, emphasizing their neutrality and role as a judicial official."<sup>91</sup>

Of significant note, Lens explains that welfare bureaucracies routinely engage in excessive proceduralism, and as a consequence, cases that make it to a hearing "often reflect this emphasis on procedural compliance."<sup>92</sup> This is an important factor to consider when comparing some states and regions, in light of locations' varying application volumes.<sup>93</sup> Judges may choose to ignore the procedural breaches and proceed to the merits of the case.<sup>94</sup> However, in highly populated areas, or at offices where the workload is substantial, this excessive proceduralism affects the way in which judges are allowed to frame their issues and decide cases.<sup>95</sup> Lens noted that suburban units have fewer defects and are more likely to proceed with the substantive issues because their caseload is much smaller.<sup>96</sup> In contrast, urban units deal more frequently with procedural issues and rarely get to exercise professional skills and discretion.<sup>97</sup> This means that "bureaucratic practices . . . shape the nature and quality of disputes" and the judges' choice of discretion at hearings.<sup>98</sup> Therefore, this suggests that

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85. Lens, *supra* note 65, at 270.

86. *Id.* at 271.

87. *Id.*

88. *Id.*

89. *Id.* at 278.

90. *Id.*

91. *Id.*

92. *Id.* at 275-76.

93. *See id.* at 276.

94. *Id.*

95. *Id.*

96. *Id.* at 277.

97. *Id.*

98. *Id.* at 277-78.

there is a significant relationship between ALJs' discretionary choices and the discretionary actions of the street-level bureaucrats.

Lens's study also begins to examine two types of ALJs in relation to decision-making—by identifying two approaches to ALJ decision-making—namely, “Bureaucratic” judges and “Adjudicators.”<sup>99</sup> Lens explains how Bureaucratic judges and Adjudicators exercise role discretion when making decisions and how that discretion will affect applicants in the Social Security Administration.<sup>100</sup> Bureaucratic judges will uphold the decisions of their frontline workers.<sup>101</sup> Adjudicators will often reverse the decision, or in the very least, exercise individual autonomy and discretion to strive towards justice for the applicants.<sup>102</sup> However, Lens does not focus on the reasons for which a judicial actor follows the adjudicative or bureaucratic approach. There are adjudicators and bureaucratic ALJs within the SSA, but perhaps geography and subsequent political nature or individual political views play a role in judges' strategic use of discretion.

### C. THE NEXT STEPS

Benítez-Silva et al. concluded in their 1999 study that “the conditional probability of being awarded benefits is more than 50% higher at the appeal stage than at the initial application stage.”<sup>103</sup> After this alarming conclusion, the researchers suggest that future work should concentrate on the cause of this variation.<sup>104</sup> Many researches have tried to determine why variations exist among different states at the street-level. For example, a recent study by Lens concentrates on the different approaches ALJs use to exercise varying discretion.<sup>105</sup> A 1997 General Accounting Office Report suggested that “the higher award rate for appealed cases is a result of the combination of large backlogs and excessive leniency at the ALJ stage.”<sup>106</sup> Benítez-Silva et al. suggest a future study is needed to determine “whether the higher award rate for appealed cases is a result of this combination of large backlogs and excessive leniency” or if it “is a result of valid reversals due to excessive stringency and poor documentation of reasons for denials” at the street-level bureaucrat stage.<sup>107</sup>

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99. *Id.* at 287.

100. *Id.* at 287-88.

101. *Id.*

102. *Id.*

103. Benítez-Silva, *supra* note 13, at 170.

104. *Id.* at 170-71.

105. Lens, *supra* note 65, at 278.

106. Benítez-Silva, *supra* note 13, at 170-71.

107. *Id.*

Most significantly, Lens's findings suggest that there is a relationship between the actions of the street-level bureaucrats and the discretion and subsequent decisions of the ALJs,<sup>108</sup> yet no such study has considered this relationship. The variations continue to exist both vertically and horizontally among actors and among states in the SSA. Lack of conformity due to the use of discretion among street-level bureaucrats and ALJs continues to contribute to these variations.

Keiser suggests that managers can reduce inconsistencies between units by sharing information and shaping perceptions of the preferences and actions of actors in other units.<sup>109</sup> If this is true, understanding the relationship and the effects of street-level bureaucrats' actions on ALJs could help reduce these inconsistencies. Therefore, this study sets out to understand this relationship and hopefully begins to fill in the gaps of the existing research in order to reduce the inconsistencies within the SSA's award process both vertically and horizontally.

#### IV. METHODS & RESULTS

In the year 2011, 3,041,500 applicants requested social security disability benefits.<sup>110</sup> Of those 3,041,500 applicants, 1,031,023 (33%) were awarded benefits.<sup>111</sup> Only 321,015 (10.6%) applicants received a disposition from an ALJ.<sup>112</sup> However, once appealed to the ALJ stage, applicants' chances of receiving benefits increased to an average of 62.82%.<sup>113</sup> ALJs grant appeals at a rate ranging from 39.8% in Delaware to 80.9% in Hawaii.<sup>114</sup> Overall, state award rates range from 26.1% in Connecticut to 49.3% in Washington D.C.<sup>115</sup> In order to better assess these discrepancies, the dependent variable in this study, the percent of awards ALJs are responsible for granting, was calculated for each available state and the District of Columbia.<sup>116</sup>

This study is based upon the current research regarding discrepancies in the administration of awards by the SSA and the ongoing debate about

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108. *See generally*, Lens, *supra* note 65.

109. Keiser, *supra*, note 11, at 253.

110. SOCIAL SECURITY ADMINISTRATION, SSI ANNUAL STATISTICAL REPORT, 2012, at 115, [https://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2012/ssi\\_asr12.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2012/ssi_asr12.pdf).

111. *Id.* at 125.

112. SOCIAL SECURITY ADMINISTRATION, ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN, 2012, at 2.75, <https://www.ssa.gov/policy/docs/statcomps/supplement/2012/supplement12.pdf>.

113. This data is a mathematical average of the percentages found in Table A1, *infra*.

114. *See infra* Table A1.

115. *See infra* Table A1.

116. *See infra* Table A1.

whether DDS workers or ALJs are to blame for these discrepancies. This study utilizes six independent variables to determine their effect on the percentage of awards ALJs are responsible for granting in each state. Concentrating on potential DDS worker influences, this study includes a dummy variable<sup>117</sup> for whether the optional state supplement fund is administered wholly or in part by the state. This study also includes dummy variables for democratic control of the governorship and democratic control of the state legislature. The study also includes independent variables for both the DDS workers' initial workload and the ALJs' workload. The model also includes an independent variable for the percent appeals granted by ALJs in order to assess the ALJs' tendency to grant appeals as a factor in the percent of awards the ALJs are responsible for awarding.

This study used ordinary least squares ("OLS") multivariate regression<sup>118</sup> to analyze the data compiled from the SSA and other state government websites. The OLS regression revealed relationships between the states, their DDS workers, and ALJs. Controlling for the six independent variables discussed above, the results are reported in the table below.

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117. A dummy variable (also known as a dichotomous or binary variable) is a variable which assumes two values, zero and 1, and is created to represent an attribute of a given observation. A value of 1 is typically associated with the presence of the attribute of interest and a value of 0 is associated with its absence. For example, if the state supplement fund is funded either wholly or in part by the state, this variable would assume a value of 1. If it was not funded by the state, this variable would assume a value of 0.

118. Ordinary Least Squares multivariate regression is a generalized linear modeling technique that may be used to model the impact of one or more variables on quantifiable outcomes of interest. "Multivariate regression" indicates that multiple independent variables are present in the model. OLS regressions are used to test the independent variables' effect on the dependent variable.

**Table 1. OLS Regression Results**

	<b>Coefficient (<math>\beta</math>)</b>	<b>Std. Error</b>	<b>t-value</b>	<b>p-value (sig.)</b>
Constant	47.145	29.332	1.607	.116
Initial Workload per 10,000	-4.214	1.140	-3.697	.001
ALJ Workload per 10,000	33.822	10.540	3.209	.003
State Funded and Administered	-9.561	7.308	-1.308	.199
Democratic Governor	.711	6.955	0.102	.919
Democratic Legislative Control	-5.934	7.739	-0.767	.448
Percentage of ALJ Appeals Granted	.074	.447	0.166	.869
n= 45	$R^2 = .324$	Adj. $R^2 =$ .217	F = 3.036 (d.f. = 6, 38)	Sig (F) = 0.016

The overall results of the OLS regression were statistically significant.<sup>119</sup> Given the observed F score, the model suggests that the joint explanatory power of the independent variables included in the model are statistically significant. However, only two of the individual independent variables have a relationship with the dependent variable. There is a significant relationship between the percentage of awards the ALJs are responsible for granting and the DDS worker's initial workload. There is also a significant relationship between the percentage of awards the ALJs are responsible for granting and the ALJs' workload.

119. "Statistical significance" refers to a result that is not attributed to chance. Here, it means that the percentage of awards the ALJs are responsible for granting is attributable to the effect of the independent variables included in the model and is extremely unlikely to result from chance.



## V. ANALYSIS

The debate continues: Who is responsible for the discrepancies between SSA reward levels and among state's award rates? This study used a model, which was developed to analyze the amount of awards that the ALJs were responsible for awarding against the independent factors that may affect the discretion of SSA agents. If the number of ALJ awards was relatively high, it would indicate that there was a flaw at the beginning of the award process that required correction. However, after looking at the available states, it is evident that the percentage of awards that ALJs are responsible for granting continues to differ among states. Since, the process for determining awards at the initial determination and reconsideration stages uses the same process and is uniform nationwide, the differing rates of appeals awards does not suggest just one flaw in the system.

This study included independent variables utilized to focus on the DDS workers' involvement at the initial stages. The purpose of utilizing such variables is to determine if something during the initial determination stage affects the initial determination or if something biases the DDS workers which would later cause a high reversal rate by the ALJs. For example, the independent variable of state funding, which is the administration of optional state funds both wholly or in part by the state, could potentially influence DDS workers awarding benefits based upon a budget. As Keiser suggested, DDS workers could be responsive to "fiscal incentives that exist for state governments to manipulate access to the programs."<sup>120</sup> Keiser found "that when state governments have a financial interest in whether applicants are given access to a program, street-level state bureaucrats take these interests into account in their decision making."<sup>121</sup> The model indicates that there is no relationship between states controlling their own funding and the likelihood that ALJs are responsible for awarding more benefits. However, it is important to note that some states administer their own optional funding either wholly or in part, but some states do not have an optional funding program, and in some cases, the federal government administers the state's optional funding. This would indicate that a state's financial incentives do not necessarily influence DDS workers to deny awards that would later be awarded by the ALJs.

However, this area should be explored further. This model only takes into account whether or not the state has some influence in administering state funds. It does not itself consider the amount of funds each state contributes, the amount of control the states have in distributing the funds,

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120. Keiser, *supra* note 27, at 158.

121. *Id.*

or whether or not the states share distribution control with the federal government; this data was not specifically available from the SSA compilation files. However, if this data were analyzed, it may reveal a relationship between DDS worker discretion and the amount of awards the DDS workers are responsible for granting as Keiser initially suggested.<sup>122</sup> Furthermore, this model lacked the data to determine how many awards each individual state distributes at the initial determination stage by state. This data would have been more useful in comparing DDS worker discretion and ALJ discretion.

Next, the model considered the workload of DDS workers and the percent of awards the ALJs were responsible for granting. The model indicates that there is a negative relationship between the DDS workload and the percentage of awards granted by ALJs. As the number of initial applications increases by 10,000, the percentage of awards the ALJs are responsible for granting decreases by 4.214 percent, all else held constant. According to Keiser's 2001 study findings, caseload demand affects the award rate because "high demand reduces acceptance rates due to resource shortages."<sup>123</sup> In contrast, this model suggests high caseload demands at the initial determination level decrease the overall percent of awards that the ALJs are responsible for awarding. This may suggest that the initial workload of DDS workers causes the workers to award benefits at a higher rate and err on the side of awarding benefits instead of later being overturned by ALJs.

In contrast, the model also suggests that there is a positive relationship between the ALJs' workload and the percent of award the ALJs are responsible for granting. As the number of appeals to ALJs increase by 10,000, the percentage of awards ALJs are responsible for awarding increases by 33.882 percent, all else held constant. This seems counter-intuitive, but it also appears that ALJs err on the side of granting appeals if they are overworked. Champagne and Danube found that there was no correlation between caseload and reversal rates.<sup>124</sup> However, they did note that "perhaps the number of cases handled by an administrative law judge is still manageable and allows him time to consider seriously all of his decisions."<sup>125</sup> Now, after twenty years have passed, it appears that the high level of workload demand does affect ALJ award rates.

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122. *Id.* at 144.

123. *Id.* at 157.

124. Champagne & Danube, *supra* note 75, at 50.

125. *Id.*

Therefore, it appears that as the workload of an individual increases, whether the individual is a street-level bureaucrat or an ALJ, the likelihood that one will error on the side of awarding benefits also increases. Overall, the study indicates that workload may be an indication of a flaw in the overall SSA benefit system that would account for the discrepancies horizontally and vertically within the system.

As suggested by Lens, it appears that in SSA offices with substantial workloads, excessive proceduralism affects how judges frame the issues and decide cases.<sup>126</sup> For example, lightly populated areas with smaller workloads have fewer defects and are more likely to proceed to ALJ hearings with the substantive issues.<sup>127</sup> In contrast, highly populated areas with an increased workload deal more frequently with procedural issues and rarely get to exercise professional skills and discretion.<sup>128</sup> Therefore, this study indicates that there is a significant relationship between ALJs' discretionary choices and the discretionary actions of the street-level bureaucrats as Lens already suggested. This demonstrates that bureaucratic practices shape the nature and quality of disputes and the judges' use of discretion at hearings.<sup>129</sup> Still, workload as a factor creating inconsistencies in the bureaucracies deserves further study, perhaps with a model that concentrates not only on workload but also the amount of DDS workers and ALJs handling the workload.

The model also considers political control of the states. The model focuses, using dummy variables, on both the governor's political affiliation and the state legislative control. The idea behind this variable was to view whether political control of either position of government persuaded DDS workers to award more or less benefits to individuals due to influence by Democrats. However, after running the regression, the results indicate that political control does not have a relationship with the percent of awards that ALJs are responsible for granting. Therefore, political control by the governor and the state legislature does not appear to create bias or control the DDS worker to either grant or deny applicants. As research suggests, political control may not influence worker discretion because both parties find advantages in awarding disability benefits to individuals in need.<sup>130</sup>

Lastly, the model considered the ALJs' appeals award rate on its own merits in order to control for ALJs who simply award appeals at a high rate, absent any influence or relationship with the initial determination stages.

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126. See Lens, *supra* note 65, at 276.

127. *Id.* at 277.

128. *Id.*

129. See *id.* at 277-78.

130. Keiser, *supra* note 27, at 157.

The results indicate that there is no relationship between the ALJ appeals grant rate and the percentage of awards the ALJs were responsible for granting by state. Although this may indicate that the ALJs' award rate is not a factor in determining the reversal of initial determinations, it may shed some light on who is to blame for the discrepancies. The model suggests there is no relationship between appeals granted and the overall grant of awards by ALJ when considered with the states' overall award rates. This suggests that ALJs are not responsible for the high reversal rates and the discrepancies among reversal rates by state.

## VI. CONCLUSION

Variations continue to exist both vertically and horizontally among actors and among states in the SSA. Lack of conformity due to the use of discretion among street-level bureaucrats and ALJs continues to contribute to these variations. Understanding the relationship and the effects of street-level bureaucrats' actions on ALJs and vice versa may help reduce these inconsistencies. Therefore, this study set out to understand these relationships and begins to fill in the gaps of the existing research in order to reduce the inconsistencies within the SSA's award process both vertically and horizontally.

These discrepancies, especially the large amount of denials at the initial determination stages, are not how the system *should* work. In order to begin to see if these discrepancies are a strategy by the SSA to award less benefits or to see if something in the administrative process is broken, this study concentrated on specific factors. These factors included a state's political control, workload demands, and a state's financial contributions to benefits programs and their effect on the percent of awards ALJs are responsible for granting.

After running an OLS regression, the study found that overall these factors have an effect on the percent of awards ALJs are responsible for granting. More specifically, the study found that the initial workload of street-level bureaucrats has a negative relationship with the percent of awards ALJs are responsible for granting. Furthermore, the study found that the workload of ALJs has a positive relationship with the percent of awards ALJs are responsible for granting. It appears that as the workload of an individual increases, whether the individual is a street-level bureaucrat or an administrative law judge, the likelihood that one will err on the side of awarding benefits also increases. Overall, the study indicates that workload may be an indication of a flaw in the overall SSA benefit system that would account for the discrepancies horizontally and vertically within the system. The study also eliminates factors such as political control, state contribution

funds, and ALJs' tendencies to award appeals at higher rates as factors that influence or bias the system significantly.

This study is important for the SSA to consider in order to improve its implementation of policy and functions of the administrative process. These results are also important for actors within the SSA, so that they can understand the relationships and the effects of those relationships with other actors within the agencies. It can also shed light on why and how the SSA makes decisions in order for attorneys and applicants to better make claims and advocate for benefits. If these discrepancies are further explored, the reason for the discrepancies can be pinpointed in order to correct any flaws in the system. Once the system is fixed, it will not only save applicants' benefits, time, inconvenience, and money, but it will also save the SSA time, resources, and money.

**Appendix**  
**Table A1: State Data Table**

State	Overall Benefits Awarded (%)	Appeals Granted by ALJs (%)	Benefits Awarded by ALJ (%)
Alabama	36.1	66.6	63.3
Alaska	40.2	54	24.5
Arizona	29.8	60.2	36.4
Arkansas	32.5	59.4	34
California	36.1	62.7	28.3
Colorado	35.7	59.3	38.4
Connecticut	26.1	67.6	51.7
Delaware	26.4	39.8	34.4
D.C.	49.3	74.2	52.5
Florida	33.9	62.7	29.3
Georgia	31.6	68.3	41.3
Hawaii	38.3	80.9	15.2
Idaho	33.3		
Illinois	29.4	57.2	52.9
Indiana	31.9	56.7	38.8
Iowa	30.5	60	18.6
Kansas	36.3	52.1	34.8
Kentucky	31.7	62.6	46
Louisiana	32.6	51.1	27.7
Maine	29.2	76.3	47.7
Maryland	30.4	66	42.1
Massachusetts	34.3	66.2	26
Michigan	36.5	61.3	41.8
Minnesota	35.6	58.9	28.5
Mississippi	28.5	52.9	41.8
Missouri	31.5	58.9	60.3
Montana	34.9	59.5	64.1
Nebraska	32.4	69.9	32.7
Nevada	33.2	62.9	16.9
New Hampshire	41.3	71.2	70
New Jersey	40.3	73.9	25.4
New Mexico	34	70.7	75.6
New York	38.4	68.8	38.3
North Carolina	30.4	65.1	37.2
North Dakota	28.3	62.6	146.2
Ohio	32.2	60.9	30.2
Oklahoma	29.8	58.8	54.8
Oregon	34.4	59.6	35.9
Pennsylvania	33.8	60.6	43
Rhode Island	33.5	60.9	43.8
South Carolina	30.5	66.6	53.5
South Dakota	30.2		
Tennessee	36.3	71.6	67.5
Texas	34.7	53.7	21.4
Utah	38.4	72.1	43.7
Vermont	33.7		
Virginia	34.8	56.9	67
Washington	40.5	69.1	34
West Virginia	32	70.9	96.6
Wisconsin	31.8	50.7	20.7
Wyoming	34		