

SOCIAL SECURITY: REEXAMINING ELIGIBILITY FOR DISABILITY BENEFITS

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## ISSUE DEFINITION

Since 1981, many social security disability recipients lost their benefits because of a major effort by the Social Security Administration (SSA) to reexamine their eligibility. This increase in reexaminations was required by amendments enacted in 1980 to deal with an earlier decline in eligibility reviews. The Reagan Administration implemented the new requirement broadly in March 1981, ahead of schedule, after GAO reported that possibly 20% of existing disability beneficiaries were ineligible.

Complaints that many of the terminations were unfair led to legislation in December 1982, P.L. 97-455, to soften the impact of the new process. The Administration also took a number of steps to ease the reviews. However, the issue was reignited early in 1983 and the House Committee on Ways and Means recommended that recipients not be terminated unless it can be shown that they medically improved, that a moratorium be imposed on reviewing persons with mental impairments, and further softening measures. They originally were included in H.R. 4170, the Tax Reform Act of 1983, which the House failed to take up before it adjourned for the year. Similar measures brought up in the Senate just before it adjourned were tabled. However, in March 1984, the Ways and Means Committee again reported out the disability provisions, but this time by themselves, as H.R. 3755, and the House passed them. The Senate Finance Committee reported out related measures as part of S. 476, which the Senate passed on May 22, 1984. Conferees for the House and Senate are expected to meet after the Memorial Day recess.

The Administration earlier had announced suspension of most disability reexaminations until Congress completed its action on the pending legislation.

## BACKGROUND AND POLICY ANALYSIS

### CURRENT PROGRAM CHARACTERISTICS

#### Beneficiaries

The DI program is the Nation's primary source of income replacement for workers (and their families) who are unable to work due to a disabling condition. In June 1983, there were 3.9 million DI beneficiaries (2.6 million of whom were disabled workers). The average benefit for single disabled workers was \$440 a month in January 1984; \$871 per month for disabled workers with dependents. FY84 expenditures are estimated to be approximately \$18 billion. About 300,000 disabled workers were awarded benefits in 1982. (Almost 350,000 additional awards were made to their dependents). Among workers awarded benefits in 1975, the average age was 55.6, 44% had been employed in blue-collar occupations requiring some type of physical labor, 60% had less than a high school education. New award data for 1977 shows that 31% of new disabled worker beneficiaries were women, and 14% were black. The leading causes of disability among beneficiaries coming on to the rolls in 1977 were: diseases of the circulatory system, 30%; diseases of the musculoskeletal system, 19%; mental disorders, 12.5%; and cancer, 10.5%.

There were approximately 2.3 million Supplemental Security Income (SSI) disability recipients who received an average of \$244 a month in July 1983 (\$254 for the blind). In FY82, approximately \$6 billion was paid out to disabled persons covered by SSI program.

### Eligibility

To be eligible for DI benefits, a worker must be both "fully" and "disability" insured. To be fully insured for life, a worker must have credit for working 40 quarters in covered employment. If a person has not worked 40 quarters, he is still fully insured if he has at least one quarter of coverage for each year after 1950, or if later, after the year in which he became 21. To be disability insured, the worker must have 20 quarters of coverage in the 40 quarters preceding the onset of disability (there are exceptions for younger workers and the blind). The worker must be unable to do any substantive work which exists in the national economy (taking into consideration age, education, and work experience) because of the disability, and the disabling condition must be expected to last at least 12 months or to end in death. There is a 5-month waiting period before benefits begin. Medicare benefits are available 24 months after disability benefits begin.

The SSI program uses the same criteria for determining disability; however, the quarters of coverage requirements do not apply. Instead, an individual must be able to meet a "means test." SSI disability recipients do not have a 5-month waiting period.

### Benefits

DI benefits are based on a worker's average monthly earnings prior to the onset of the disability, which are indexed to reflect national wage growth (most of a worker's career earnings are taken into account in computing the average). The benefits are adjusted annually for increases in the cost of living. Benefits are also provided to dependents, although there are limits on the maximum amount a family can receive. A worker who earns more than \$300 per month is considered to be engaging in substantial gainful activity and therefore no longer eligible for any DI benefits, although some "trial" work is permitted. DI benefits may be offset if an individual is simultaneously receiving workers compensation benefits or certain other public disability benefits.

In the SSI program, there are flat Federal benefit amounts payable of \$304/month for a single person and \$456/month for a couple (supplemented by many States). These amounts may be reduced if the individual or couple has other income.

### THE CURRENT DISABILITY DETERMINATION PROCESS

The disability determination process, which is generally the same for both DI and SSI disability and blindness claims, can involve decisions at five or more distinct levels -- an initial decision, three appeal levels within SSA, and then the Federal judicial system. The procedures of each decision level are discussed briefly as follows.

## 1. Initial Determination by SSA District Offices and State Agencies

Applications for DI and SSI disability benefits are filed by claimants in one of SSA's district offices. The district offices accept applications, obtain the names of the physicians, hospitals or clinics that have treated the claimants, and make all the nonmedical eligibility determinations based on such factors as insured status, work activity, and for SSI claims, income and resources. If the claim is denied because the applicant does not meet these nonmedical requirements, a formal notice is sent.

A claimant's application (or file in the case of an existing beneficiary), any medical records he or she may have provided, lists of sources of medical evidence, and other background information obtained during the district office interview are forwarded to the disability determination service (DDS) in the individual's home state. The DDSs are State agencies and are usually components of State vocational rehabilitation or education agencies. Their total operating costs are paid by SSA with social security trust fund money.

The State agency disability examiner may request more detailed medical reports from physicians who have treated the claimant/beneficiary. These medical reports from physicians are expected to consist primarily of clinical and laboratory findings. However, if sufficient medical information cannot be obtained in this manner, the disability examiner may ask the individual to be seen by a private physician selected by the State agency. The disability examiner may also seek more information pertaining to the claimant's education and work experience from the claimant.

After the required evidence has been obtained, a two-person State agency team consisting of a physician and the disability examiner makes a decision on the claim. The physician determines from the medical evidence the extent to which physical or mental limitations exist and whether the impairment meets or equals the medical listings published in regulations. The medical listings describe specific diagnostic signs, symptoms, and clinical laboratory findings for various common impairments which are considered severe enough to prevent a person ordinarily from doing any substantial gainful work on an ongoing basis. If the claimant is not found to be disabled on the basis of the medical criteria in the listings, a determination is made of the claimant's physical and mental ability to perform various types of work-related functions.

The disability examiner determines whether, with those limitations, the claimant can or cannot perform substantial gainful activity in jobs that exist in the national economy, based on the claimant's age education, and work experience. Disability decisions are then issued as Federal decisions and the claimant is notified. A similar process is followed for existing beneficiaries undergoing a continuing disability review. If the claim is denied, the formal notice indicates why and advises the applicant of his or her appeal rights. If the decision is to terminate benefits, the disability beneficiary receives benefits for the month that the disability ceased and for two additional months (or longer if the individual files an appeal).

## 2. Reconsideration by State Agencies

Individuals who receive an unfavorable initial decision have a right to have their cases reconsidered, but must file for reconsideration within 60 days after receiving notice of the denial or termination of benefits. The reconsideration process is similar to the initial process except that, after

the social security district office updates the individual's file, a different State agency team reviews the case.

It should be noted that the individual is not seen by the State disability examiners at either of these first two stages of the process (i.e., the "initial" determination or the "reconsideration"). Where a beneficiary is being reviewed, however, local social security district office personnel will conduct a face-to-face interview with the individual to ascertain that all the necessary information has been obtained to perform the review. This lack of face-to-face contact with the disability examiner has been the subject of considerable criticism, and Congress responded to it late in 1982 by enacting a provision requiring that people being terminated be given an opportunity to present their case to a disability examiner, face-to-face, at the "reconsideration" stage of the process. The new law requires SSA to make such hearings available beginning in January 1984.

### 3. Hearing before an Administrative Law Judge

If the reconsideration team upholds the initial denial of benefits, the individual may request a formal hearing before an administrative law judge (ALJ) in the SSA Office of Hearings and Appeals (OHA). A request for a hearing must be filed within 60 days after receiving notice of the reconsideration determination. These hearing offices are located throughout the Nation.

The ALJ is responsible for obtaining all relevant evidence for the case, holding a face-to-face nonadversary hearing with the individual, and making a decision. The ALJ may request the appearance of medical and vocational experts at the hearing and can require the individual to undergo a consultative medical examination. The individual may submit additional evidence, produce witnesses, and be represented by legal counsel or lay persons. There is no charge for requesting a hearing.

Legislation enacted in 1982 allowed persons terminated before October 1983 to choose to continue to receive benefits while they appealed. Benefits could continue until the hearing stage, but an adverse hearing decision could result in their having to repay the benefits.

Temporary legislation enacted early in October 1983 extended this provision until Dec. 7, 1983. It is now expired; however, the Administration announced on Apr. 13, 1984, that no one in the appeals pipeline would be terminated until Congress completed action on the pending disability legislation.

### 4. Appeals Council Review

Following a denial of benefits by an ALJ, the affected individual may, within 60 days after receiving notice, request SSA's Appeals Council to review the decision. The Appeals Council is a 15-member body located in Arlington, Virginia. It may uphold or change the ALJ's action or it may remand the case to an ALJ for further consideration. It may also review any ALJ action on its own motion within 60 days after the date of the ALJ's action. The Appeals Council review is a reexamination of the case as it was developed through the hearing stage. New evidence is not obtained and the individual does not usually make a personal appearance.

## 5. Federal District Court

The Appeals Council review is the claimant's last recourse within the Social Security Administration. If the Council affirms the denial of benefits or refuses to review the case, further appeal may be made through the Federal district courts.

### THE CURRENT DISABILITY CASE REVIEW PROCESS

#### Review of State Agency Allowances

The Disability Amendments of 1980 requires SSA to review a certain proportion of favorable decisions made by the State agencies before benefit payments begin. This pre-effectuation review, in which incorrect allowances are reversed prior to payment of any benefits, is intended to promote the uniformity and accuracy of favorable disability decisions. The review applies to favorable decisions made by the State agencies on initial claims and continuing disability reviews.

SSA began the new procedure in October 1980 and was required to review 35% of all favorable State agency decisions in FY82 and 65% thereafter. Reviews have been targeted on those types of cases determined from available data to be most likely in error.

#### Own Motion Review of ALJ Decisions

On Oct. 1, 1981, SSA implemented a program of own-motion review. Under this review the agency, at its own initiative, examines decisions rendered by ALJs. The review is conducted by the Appeals Council. The Council may affirm or reverse the decision or remand the case to an ALJ for further proceedings.

#### Continuing Disability Reviews

The State agency not only has the function of deciding who comes on the disability rolls, it also must make determinations as to whether individuals stay on the rolls.

When an existing case is selected for review, the State agency notifies the beneficiary and asks for information about his current condition and whether he recently received medical treatment and, if so, where. As previously mentioned, this information may be obtained through an interview at the social security district office. If the current medical evidence is not detailed enough, or if the beneficiary has had no recent medical treatment, the State disability examiner arranges for a consultative examination by a physician.

The disability examiner then evaluates the medical evidence and determines whether the beneficiary continues to be eligible. Those who are found to be no longer disabled are informed by letter and advised that if they disagree they have additional time to submit further evidence.

If the State agency, after looking at any further evidence, still finds that the beneficiary does not meet the disability criteria, the beneficiary

is notified and informed that he may appeal the decision by requesting a reconsideration within 60 days.

## THE CONTINUING DISABILITY REVIEW PROBLEM

### Acceleration of Eligibility Reviews

A GAO report issued in January of 1981 estimated that as many as 20%, or 584,000, of DI beneficiaries were either ineligible or receiving too large a payment. (A later report from SSA indicated it could be as high as 30%.) As a result, the Reagan Administration accelerated a new review procedure that was mandated by legislation enacted in 1980. That legislation called for tightening the initial claims process with an eye to weeding out ineligible at the outset and continuously investigating DI beneficiaries to ascertain whether they remain eligible.

There was considerable strain put on SSA when it was made responsible for processing black lung claims in the early 1970s and then, shortly thereafter, when it took over the State disability welfare rolls upon implementation of the SSI program. Under the conditions imposed by these heavy workloads, many claims may not have been well enough developed to assure that the individuals involved were, in fact, eligible for DI benefits. In addition, budget pressure within the Administration on staff resources in the early 1970s led to a sharp curtailment of Federal verifications of the disability decisions made by State agencies. Further, monitoring of the eligibility of existing DI beneficiaries took second place to public and congressional pressure to process initial claims as quickly as possible.

Through the 1970s, the number of continuing disability reviews (CDRs) conducted annually stayed relatively static (about 150,000 to 200,000 cases per year), while the number of disabled workers joining the DI program grew dramatically. This situation raised concerns in Congress that SSA might not be putting enough effort into assuring that only those people who could meet the conditions for eligibility continued to receive benefits. This led to a provision in the 1980 Disability Amendments, which, as mentioned earlier, required that unless a DI beneficiary had been diagnosed as permanently disabled, he had to be reexamined at least every 3 years.

The new law was to go into effect beginning in January 1982. The change did not give SSA new administrative authority. Since the inception of the DI program, SSA had the responsibility of continuously monitoring the eligibility of existing beneficiaries. The 1980 provision merely established a "minimum review" requirement.

Responding to the GAO report, the Reagan Administration decided to accelerate the new review requirement as part of its FY82 budget initiatives, and in March 1981 started reviewing about 30,000 additional DI cases per month, beyond the then "normal" review workload. (The SSI disabled were not subjected to the new review effort, except for those who were simultaneously entitled to DI benefits. Their exclusion was due primarily to resource limitations.) The following table shows the changes in the volume of reviews that the new initiative brought about.

Number of Continuing Disability Reviews  
(DI and SSI State Agency Decisions)

FY77	192,000
FY78	149,000
FY79	165,000
FY80	160,000
FY81	257,000
FY82	497,000
FY83	544,000
FY84 (1st Qtr.)	76,000

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Source: Committee print 98-93. Senate Finance  
Committee, Sept. 1983. FY83 and FY84 information from SSA.

Congressional concerns subsequently arose from reports that the expanded review effort was resulting in terminations of many beneficiaries, without much warning, and allegedly in some instances without much evidence that the individual was not disabled. The rate of termination from these reviews initially was running at close to 50%. It then hovered in the 45% range for more than a year, and dropped below 40% in the last half of 1983 as a result of softening actions taken internally by the Administration.

From March 1981 through December 1983, 1,297,000 persons had gone through the new review process, and 476,000 of them had been terminated at the initial stage. Many, but not all, appealed and had their initial decision reversed by an ALJ; others are still in the appeals pipeline. Many of these terminated beneficiaries were on the rolls for a number of years and had not been reexamined until the intensified review effort began. Suddenly, they found their continued eligibility in question. Many complained that they were still disabled and were wrongfully terminated. Adding to these complaints, substantial delays arose in the SSA appeals process because of the large number of persons filing appeals. There were some 173,000 cases pending before ALJs at the end of September 1983 (in contrast to the 110,000 case backlog at the end of September 1980). Some individuals have been waiting from 6 to 12 months to get a hearing, at which an ALJ ultimately may decide that they were entitled to benefits all along. During the months of February 1982 through September 1983, ALJs heard 152,000 appeals, reversing the earlier termination decision in 92,000 of them (61%).

#### Judicial and State-Level Reactions

Concern also was shown for the review effort in the Federal court system and at the State level, where disability reviews are actually conducted. Approximately 30 States have, either on their own or by court order, stopped making terminations or begun using more liberal termination procedures. Consequently, the DI program -- intended to operate as a national program with uniform policies and procedures -- is now operating de facto under somewhat varying State or regional policies.



## 1. Impact of Judicial Decisions

As terminations mounted, a significant number of individuals appealed their cases to the Federal court system. The subsequent court decisions have sometimes been at odds with SSA policy, and have resulted in termination policies that vary from one region of the country to another.

Medical Improvement: Under present SSA policies, disability benefits are terminated where current eligibility requirements are not met; no medical improvement needs to be shown. The ninth circuit court in two opinions -- Finnegan v. Mathews and Patti v. Schweiker -- held that in SSI disability cases SSA must show improvement before benefits can be terminated. In May 1983, following the precedent in the Patti decision, a Federal district court, in Morrison, Doe, and Decker et al. v. Schweiker, in a statewide (Washington) case, enjoined SSA from terminating social security or SSI benefits without applying a medical improvement standard. However, in another decision rendered by the second circuit court on Oct. 11, 1983, the judge upheld SSA's current policy of terminating benefits if the individual cannot meet the current disability criteria, regardless of whether medical improvement can be shown (Wheeler v. Heckler). There would now appear a conflict among the circuit courts about SSA's interpretation of the law.

Standards for Mentally Ill: In a class action suit, a district court in Mental Health Association of Minnesota v. Schweiker found that SSA and the State agencies were following an improper standard in evaluating whether younger workers with mental impairments are disabled. The court ordered SSA to (1) cease using the improper standard; (2) review all cases in the region where benefits were not awarded or were stopped after Mar. 1, 1981; and (3) pay interim benefits in all cases until they were evaluated using the proper standard.

Nonacquiescence: Under the Federal judicial system, decisions of a Circuit Court of Appeals are considered the "law of the circuit" and constitute binding case law on all district courts within the circuit. However, SSA does not follow circuit court decisions with which it disagrees, either nationwide or within the circuit of the ruling (as is generally the policy for other Federal agencies). While the agency does obey the court's ruling as it pertains to the individual(s) in the particular case, the interpretation of law by the court is not considered binding either for the State agencies or for Federal social security offices. SSA also instructs its ALJs to continue to apply existing agency policy to other cases rather than the court's ruling. Generally, if two circuits rule differently on the same issue, the Supreme court will settle the dispute.

Federal judges in both the eighth and ninth circuits criticized the Secretary of HHS for using this policy of nonacquiescence. In the Lopez v. Heckler case, the Ninth Circuit Court of Appeals first refused to issue a stay (requested by the Administration) of a lower court's ruling that the Secretary temporarily had to follow the "medical improvement" principles established in the Finnegan and Patti decisions (described above) and provide interim payments to the affected individuals. After Supreme Court Justice Rehnquist subsequently granted a partial stay (later sustained narrowly by the full Supreme Court) -- allowing SSA to avoid making the interim payments -- the ninth circuit court largely ruled against the Administration on the question of the interim payments. The district court has yet to decide on the substance of the non-acquiescence issue.

## 2. Actions Taken by the States

Concern about the review process prompted some State officials to take their own action. On May 9, 1983, the Massachusetts Disability Determination Service, in response to a directive from Governor Dukakis, instituted new procedures for reviewing cases incorporating their interpretation (not SSAs) of the evidentiary requirements set forth in Miranda v. The Secretary of HHS. The State agency took the position that once a person has been found eligible, disability benefits may not be terminated unless the individual's condition has substantially improved or unless the review shows that the condition is not as serious as once supposed. Arkansas, Kansas, and West Virginia have similarly adopted more liberal termination policies on their own.

On July 22, 1983, the Social Services Commissioner of New York, on his own initiative, temporarily suspended terminating disability beneficiaries pending establishment of a new medical improvement standard for terminating disability beneficiaries. (This, however now may be in conflict with the second circuit court's decision in the Wheeler case previously mentioned). Besides a moratorium on cessations, New York State joined in a lawsuit challenging the Federal standards used to determine eligibility of the mentally impaired. Alabama, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia also, on their own, imposed a moratorium on terminations. Still other States, reacting to Court decisions to loosen up on terminations, have now or at one time imposed temporary or indefinite moratoriums. They include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Michigan, Montana, Nevada, Oregon, and Washington.

LEGISLATIVE ACTION IN THE 97TH CONGRESS: P.L. 97-455

### House and Senate Action

In September 1982, the Senate Finance Committee recommended a number of measures to soften the impact of the termination procedures. The committee reported out these measures as part of a House-passed bill altering certain taxes paid to the Virgin Islands (H.R. 7093). The Senate approved its version of the bill on Dec. 3, 1982, by a 70-4 vote and sent it back to the House.

The House Ways and Means Committee earlier in the year had approved similar softening measures as part of H.R. 6181, originally introduced as H.R. 5700 (see H.Rept. 97-588, May 1982). However, it was never considered by the full House because of controversy over a couple of its features -- features which would have imposed agency-wide decision-making standards and certain evidence-gathering constraints on the ALJs at the hearing stage. Although that bill was never taken up by the full House, when the Senate sent the Virgin Islands tax bill (H.R. 7093) back to the House in December 1982 with disability provisions attached, the House took the opportunity to revive several provisions of the original Ways and Means Committee bill. The full House approved a modified H.R. 7093 by unanimous consent on Dec. 14, 1982, and sent it back to the Senate with the additional amendments.

Conference Report and Final Passage

At the request of the Senate, a House-Senate conference committee was organized to work out a compromise agreement on H.R. 7093. On Dec. 21, 1982, the conference committee filed a report which was approved by both the House (259-0) and Senate (no recorded vote) on that day, just before the adjournment of the 97th Congress. The final legislation contained the following social security provisions (in addition to the provision reducing the rate of certain taxes paid to the Virgin Islands):

1. Continuation of DI benefits for terminated beneficiaries until a decision on the appeal has been reached by an administrative law judge, but not beyond June 1984 and not for terminations occurring after Sept. 30, 1983. Beneficiaries whose appeals were pending at the time of enactment as well as those whose benefits were terminated before Oct. 1, 1983, were to be eligible to elect the special benefits paid during appeal. These benefits would be subject to recoupment as overpayments if the termination decision were ultimately upheld on appeal. (It should be noted that this provision was extended to Dec. 7, 1983, by P.L. 98-118, but has since expired.)

2. Authority for the Secretary of Health and Human Services to waive, on a State-by-State basis, the statutory requirement (from 1980 disability amendments) that all non-permanently disabled beneficiaries be subject to a continuing disability review at least once every 3 years. Waiver could be granted only when the Secretary found that the State agency had made a good faith effort to process reviews in a timely fashion.

3. A requirement that no later than Jan. 1, 1984 the State agencies or SSA conduct an evidentiary hearing, with an opportunity for an in-person appearance by the terminated beneficiary, as a part of the reconsideration level of appeal in all DI benefit termination cases.

4. A requirement that the Secretary of Health and Human Services inform all terminated beneficiaries of the procedures used in reconsiderations including the opportunities to introduce evidence and to be represented by an attorney.

5. A requirement that the Secretary of Health and Human Services make a semi-annual report to Congress on the number of continuing disability reviews conducted and the disposition of the cases on appeal.

6. A modification of the government pension offset provision to permit either male or female spouses with pensions from non-covered government work to be exempt from the government pension offset if they were dependent on their social security-covered spouses for at least one-half of their support and if their government pensions became payable during the period Dec. 1, 1982, through June 30, 1983. Without this modification, the government pension offset would have applied to all female government-worker spouses who became eligible for government pensions as of Dec. 1, 1982, or later (it already was in force for most men at that point). It should be noted that this offset provision was further amended in April 1983 as part of the Social Security Amendments of 1983 (P.L. 98-21), liberalizing the offset so that only two-thirds of a government pension can be used to make the offset (instead of the full pension). This provision was made available only to those who become eligible for a government pension after June 1983.

President Reagan signed the bill into law, P.L. 97-455, on Jan. 12, 1983.

## LEGISLATIVE ACTION IN THE 98TH CONGRESS

Action in the First Session

Concerns about the eligibility reviews were ignited again early in 1983 largely because of a GAO report that terminations of many mentally impaired beneficiaries have been made under faulty guidelines -- guidelines which have imposed a much tougher set of eligibility rules upon the mentally impaired than persons with other impairments. GAO stated in testimony before the Senate Special Committee on Aging (in April 1983) that the mentally impaired were more heavily reviewed than other segments of the beneficiary population, and that their initial terminations were being reversed more readily upon appeal at the hearing stage. They also stated that the State agencies were often unable to obtain adequate psychiatric consultant services to assist in making decisions.

SSA countered that disability determinations for those with mental impairments have always been much more difficult to make than for persons with other types of disabilities. They added that the problems GAO encountered with the policy guidance given to the State agencies was corrected and new guidance disseminated, and that they were working with the States to obtain more psychiatric support services.

Nonetheless, the issue reignited concern about the expanded eligibility review process in general, and as well about the whole process of making disability determinations by SSA and the State agencies.

Responding to the concerns raised about the terminations of the mentally impaired, the Senate adopted an amendment by Senator Heinz on June 15, 1983, to a supplemental appropriations bill (H.R. 3069), which would have suspended continuing eligibility reviews of the mentally impaired until the Secretary of Health and Human Services revised the regulatory criteria for evaluating mental impairments. The Secretary would have been required to revise the criteria within 6 months, with the assistance of a panel of experts in the field of mental health. The amendment also required the Secretary to make a determination of disability in a mental impairment case only when the case has been evaluated by a qualified psychiatrist or psychologist. No similar measure was in the House version of the Supplemental Appropriations bill, and when it was taken up by the House-Senate conferees it was dropped because of a procedural conflict with House rules that preclude substantive alterations of program legislation through appropriations bills.

While this measure was dropped, legislative interest was building in the House, beginning with hearings held by both the Social Security Subcommittee of the Ways and Means Committee and the Select Committee on Aging. Markup sessions on a draft bill were then conducted in July, August and September 1983, with the Ways and Means Committee reaching final agreement on an extensive package of changes on Sept. 27, 1983. These measures originally were contained in H.R. 3755 (Pickle et al.) The Committee subsequently incorporated them into an omnibus tax bill, H.R. 4170 (which included numerous other changes in the tax law, Medicare, and trade adjustment assistance). However, the recommended rule under which the House would have voted on the tax bill was rejected on Nov. 17, 1983, leaving the bill (including its disability provisions) in limbo at the time of congressional

adjournment for the year.

Similar, but less costly, provisions were also presented to the Senate on Nov. 17, 1983, when Senators Cohen and Levin et al. attempted to attach an amendment to H.R. 3959, another supplemental appropriations bill.

Senate action, however, was blocked by a tabling motion by Senator Garn, which was accepted by a vote 49-46.

The key issue with the House disability package and the Cohen-Levin amendment, in addition to their cost, has been over the question of adopting a "medical improvement" standard. Advocates argue that it is needed to bring order to the system and relief from the harsh impact of the terminations. Critics argue that it would create a double standard between applicants and existing beneficiaries as well as allow ineligible recipients to remain on the rolls.

P.L. 98-118 and H.R. 3391: Earlier in the fall, Congress passed a 67-day extension of the provision enacted in 1982, allowing terminated beneficiaries to continue to receive benefits while they appealed their termination (as part of H.R. 3929 dealing with supplemental unemployment insurance benefits, P.L. 98-118). The 1982 provision expired on Sept. 30, 1983. The 67-day extension allowed persons terminated before Dec. 7, 1983, to receive benefits while they appeal. The additional months of benefits would not be available to persons terminated after that point. Following the action on Nov. 17, 1983, which blocked consideration of the Ways and Means disability provisions and the Cohen/Levin amendment, Senator Dole et al. offered on Nov. 18 an amendment to a worker training bill, H.R. 3391, which would have extended the provision, allowing a beneficiary terminated before June 7, 1984, to receive benefits while appealing, as well as extending a couple of SSI disability provisions due to expire on Dec. 31, 1983. It passed the Senate by a vote of 80 to 0; however, when it was sent back to the House later that day, it had been considered under a special rule requiring unanimous consent. Rep. Dannemeyer objected to bringing it up under that rule, and the House failed to consider the Senate-passed measure before adjourning for the year. However, early in 1984, the House passed the SSI portion of H.R. 3391, but deleted the DI measure to continue benefits upon appeal.

#### Action in the Current Session

On Mar. 14, 1984, the House Ways and Means Committee separated the disability provisions from the tax bill, and reported them out, this time by themselves, in H.R. 3755. The House subsequently passed them on Mar. 27, 1984, by a vote of 410-1.

On May 18, 1984, the Senate Committee on Finance reported out related measures as contained in S. 476, introduced by Senators Cohen and Levin et al., with a number of modifications made by the Committee. The Senate then passed them on May 22, 1984, by a vote of 96-0. House and Senate conferees are expected to meet after the Memorial Day recess.

The following side-by-side provides a comparison of the major provisions contained in the House-and Senate-passed bills.

House-Passed Bill  
(H.R. 3755)

Provides permanent authority for continued benefit payments until a hearing before an ALJ in cases where a termination of benefits for medical reasons is being appealed (this authority expired under current law on Dec. 7, 1983);

Provides for a delay of reviews of all mental impairment disabilities until regulations stipulating new medical listings for mental impairments are published, which must be no later than 9 months after enactment. This moratorium would include all cases upon which a timely appeal was pending after June 6, 1983, and the bill provides special procedures for any new mental impairment applications denied during this period and for those with mental disabilities who had their benefits terminated after Mar. 1, 1981;

Provides permanent authority that benefit payments can be terminated only if SSA can prove that the individual's medical condition improved, unless: the individual is working at the substantial gainful activity level, the original determination was in error or obtained by fraud, the individual has benefited from advances in medical technology or vocational therapy, or new evidence (including that arising from new diagnostic techniques) shows the impairment to be less severe than originally thought;

Senate-Passed Bill  
(S. 476)

Similar, but with authority expiring on June 1, 1986;

Similar;

Related. When an explicit finding is made that the individual's condition has not improved or that his impairment has worsened, benefits would be continued unless one or another of the exceptions specified in the House bill applies. However, where a finding that the individual's condition is the same or worse cannot be reached, the continuing eligibility decision would be based on the individual's condition at the time he is reviewed. The provision would expire 3 years after the issuance of implementing regulations;

(table continued)

<u>House-Passed Bill</u> (H.R. 3755)	<u>Senate-Passed Bill</u> (S. 476)
Requires that in cases of multiple impairments, the combined effect of all the impairments must be considered in making disability determinations;	Similar;
Provides for a face-to-face hearing between the beneficiary and State agency disability examiners in potential termination cases at the initial decision level; also requires that demonstration projects be conducted in at least five States on similar face-to-face meetings with new claimants who are denied. A report to Congress would be required by Apr. 1, 1985;	Provides for demonstration projects in five States which would give beneficiaries who are being reviewed an opportunity to make a personal appearance before an initial determination of ineligibility is made;
Requires that a psychiatrist or psychologist must complete the evaluations of individuals with mental disabilities in unfavorable decisions;	The Secretary must make "every reasonable effort" to ensure that a qualified psychiatrist or psychologist completes the medical or related assessment of limitation portions of unfavorable mental impairment determinations;
Requires that all disability decisionmakers within the system (SSA and the States) are bound only by policy set out in regulation;	Similar, but more directly targeted on policies which impact on the standards of eligibility for disability;
Requires SSA to apply Federal circuit court decisions uniformly in that circuit, unless they are appealed;	Requires SSA to publish in the Federal Register a statement when it decides whether or not to acquiesce in decisions of U.S. Circuit Courts of Appeal; also requires that these decisions be reported to Congress;

(table continued)

<u>House-Passed Bill</u> (H.R. 3755)	<u>Senate-Passed Bill</u> (S. 476)
Provides for more flexible reimbursement provisions to providers of vocational rehabilitation services;	Similar;
Provides for a study to be done by the National Academy of Sciences with a report to Congress by Apr. 1, 1985, on using subjective evidence of pain in the disability determination process;	Puts in law the current regulatory policy on how "pain" is to be evaluated in disability determinations until Dec. 31, 1987, while a commission of medical and other appropriate experts studies the issue. A report to Congress would be due by Dec. 1986;
No similar measure in House bill;	Requires the Secretary of HHS to federalize a State disability agency within 6 months of finding that the State is failing to follow Federal laws and standards. The provision would expire Dec. 31, 1987;
No similar measure in House bill;	Requires the Secretary of HHS to reduce inflation adjustments and adjustments made to the benefit formula for initial awards, if the reserves in the DI trust fund fall below 20%; Congress must be notified by July 1 of the preceding year.



Both bills also reauthorize a provision allowing special benefits under SSI and Medicaid to continue for certain impaired persons who have earnings which would otherwise make them ineligible (section 1619 of the Social Security Act.) In addition, the Senate bill establishes new monitoring and reporting requirements for persons acting as representative payees for social security and SSI recipients. It also increases the penalty for misuse of funds by a representative payee.

#### STRUCTURAL CHANGES MADE INTERNALLY BY THE ADMINISTRATION

On Dec. 9, 1983, the Administration announced that it temporarily was holding up sending out any termination notices dated Dec. 7, 1983, or later -- in effect, creating a moratorium on disability reviews.

On Jan. 25, 1984, the Administration announced that it was opposed to the disability legislation pending before the Congress, specifically mentioning the provisions of H.R. 4170. It stated that the administrative and legislative changes already put in place made other reforms unnecessary, and pointed out that the "very high cost" (possibly \$6 billion over the first 5 years) of H.R. 4170 made it "unacceptable" given that the "safety margins in the OASDI trust funds are relatively small." The Administration also announced that the temporary moratorium imposed on reviews in December 1983 has been lifted, effective for terminations in February 1984. However, on Mar. 24, 1983, the Washington Post reported that the Administration was on the verge of announcing a new moratorium, to extend over an 18-month period. On Apr. 13, 1984, the Administration announced an indefinite moratorium on reviews as well as suspending the terminations then in progress or in the appeals pipeline.

Earlier, the Administration made a large number of structural changes to the review process on its own. A first series of changes was announced in 1982. A second series was announced in June 1983.

Among the actions taken in 1982 were: conducting face-to-face interviews at the social security district office before the eligibility review takes place to obtain directly from the beneficiary any additional medical information; reducing the number of persons reviewed by expansion of the category "permanently disabled" to include additional kinds of impairments; requiring State agencies to obtain all medical evidence from physicians, hospitals, etc., for the 12 months prior to the review; requiring State agencies to be more complete and specific in their written explanations of why beneficiaries are found not to be disabled; reexamining the process for evaluating mental disorders, including testing the use of multiple consultative examinations in cases of psychiatric impairments; and reducing the number of reviews conducted in some States.

In response to renewed concerns about the review process raised early in 1983, SSA, on June 7, 1983, announced additional measures. These actions included: exempting 200,000 more individuals from the reviews, bringing the total exempted to more than 1 million; exempting about two-thirds, or 135,000, of the mental impairment cases from the reviews pending consultation with outside professionals on revisions to standards and procedures now in use; and moving to random selection of cases for State review (rather than focusing on cases where recovery was most likely), thereby lowering the

number of cases terminated at the State agency level.

Early in 1983, the Administration estimated that 640,000 cases would be reviewed in FY83 and 627,000 in FY84. As a result of the June 1983 actions, the estimates made early in the year were reduced by 130,000 cases in FY83 and 141,000 in FY84. In this regard, the social security actuaries also have recently revised the estimates of the cost of the DI program, raising their estimates by \$5 billion for the period 1984 to 1988. In conjunction with these revised outgo figures, the actuaries have reduced their estimates of the amount of DI reserves that will be on hand. Although quite low, these revised reserve estimates do not as yet suggest that a financial problem will emerge in the DI fund.

While the overall impact made by these two sets of changes is not clear, the decision-making atmosphere in the State agencies appears to have changed markedly. Termination rates have fallen from about 45% in 1982 to 37 or 38% in the latter half of 1983 (i.e., of the cases which are actually reviewed by the States), and allowance rates on new claims have risen from about 28% to 33 or 34%. Although these changes cannot be directly attributed to the actions taken by the Administration, these steps and those taken individually by the States and the courts are probably largely responsible for a apparent softening of the decision-making process.

#### LEGISLATION

Because numerous disability bills have been introduced, this section discusses only legislation which received some sort of congressional action.

##### P.L. 98-118, H.R. 4101

Extends the Federal Supplemental Compensation Act of 1982, and for other purposes. Called up by committee discharge in House; passed House Oct. 6, 1983. Called up by unanimous consent in Senate; passed Senate, amended, Oct. 6. Enrolled in both Houses Oct. 7. Signed into law Oct. 11, 1983.

##### H.R. 2987 (Shannon et al.)

Provides for numerous reforms of the disability determination process, including standards for decision-making and methods of developing evidence; continues benefits upon appeal for terminated beneficiaries; imposes a moratorium on continuing disability reviews of persons with mental impairments and makes other reforms in decision process affecting the mentally impaired. Introduced May 11, 1983; referred to Committee on Ways and Means (considered in subcommittee markup).

##### H.R. 3391 (Dole et al.)

Extends provision allowing benefits to be received while appealing termination until June 7, 1984. Passed Senate Nov. 18, 1983. [See text on legislative activity in 98th Congress.]

##### H.R. 3755 (Pickle et al.)

Social Security Disability Reform Act of 1983. Amends title II (Old Age, Survivors and Disability Insurance) of the Social Security Act to provide for reform in the disability determination process. Introduced Aug. 3, 1983; referred to Committee on Ways and Means. Ordered to be reported, amended, Mar. 14, 1984. Passed House Mar. 27, 1984. [See also H.R. 4170.] Similar measures introduced in Senate as S. 2002 (Moynihan et al.)

H.R. 4170 (Rostenkowski et al.)

Provides for tax reform, among other purposes. Introduced Oct. 20, 1983; referred to Committee on Ways and Means. Reported (H.Rept. 98-432), with amendment, Oct. 21, 1983. [Contains disability provisions identical to H.R. 3755.]

S. 476 (Levin et al.)

Requires SSA to appeal to the Supreme Court any Court of Appeals decision with which it has chosen not to acquiesce; requires SSA to generally show medical improvement (or clear error) before terminating benefits; eliminates reconsideration in initial and continuing disability cases but substitutes the right to a face-to-face interview with the initial decisionmaker after notification of a preliminary unfavorable determination; makes permanent the provision continuing benefits until the ALJ decision in termination cases; and promulgates uniform standards for disability determinations subject to public comment. Introduced Feb. 15, 1983; referred to Committee on Finance. Reported by Committee on Finance May 18, 1984, with modifications.

S. 1144 (Heinz et al.)

Provides for revision of regulatory criteria relating to mental impairments; until the new criteria are in place, requires that no continuing eligibility reviews would be carried out with respect to any individual previously determined to be under a disability by reason of a mental impairment; and requires that determination of a mental disability would be made only on the basis of an evaluation by a qualified psychiatrist or psychologist. Introduced Apr. 26, 1983; referred to Committee on Finance. Related measure passed by Senate as amendment to H.R. 3069 -- see discussion in preceding section on Congressional Interest Continues in 98th Congress.

## HEARINGS

U.S. Congress. House. Committee on Ways and Means.  
Subcommittee on Social Security. Disability amendments  
of 1982. Hearings, 97th Congress, 2d session, on H.R. 5700.  
Mar. 16-17, 1982. Washington, U.S. Govt. Print. Off., 1982.  
408 p.

"Serial 97-54"

LRS82-10164

----- Social security disability insurance. Hearing, 98th  
Congress, 1st session. June 30, 1983. Washington, U.S.  
Govt. Print. Off., 1983. 241 p.

"Serial 98-25"

LRS83-14691

----- Social Security Miscellaneous and Technical Improvements Act  
of 1982. Hearing, 97th Congress, 2d session, on H.R. 7326.  
Dec. 6, 1982. Washington, U.S. Govt. Print. Off., 1983.  
167 p.

"Serial 97-88"

LRS83-4069

U.S. Congress. Senate. Committee on Finance. Social security  
disability insurance program. Hearing, 97th Congress, 2d session.  
Aug. 18, 1982. Washington, U.S. Govt. Print. Off., 1982. 535 p.

LRS82-15755

U.S. Congress. Senate. Committee on Governmental Affairs.  
Subcommittee on Oversight and Government Management. Social  
security disability reviews: the role of the administrative  
law judge. Hearing, 98th Congress, 1st session. June 8, 1983.  
Washington, U.S. Govt. Print. Off., 1983. 470 p.

S.Hrng. 98-296

LRS83-12373

----- Oversight of social security disability benefits terminations.  
Hearing, 97th Congress, 2d session. May 25, 1982. Washington,  
U.S. Govt. Print. Off., 1982. 508 p.

LRS82-10727

U.S. Congress. Senate. Special Committee on Aging. Social  
security reviews of the mentally disabled. Hearings, 98th  
Congress, 1st session. Apr. 7 and 8, 1983. Washington, U.S.  
Govt. Print. Off., 1983. 373 p.

S.Hrng. 98-170

LRS83-9620

#### REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Conference Committee, 1982. Taxes on Virgin Islands  
source income; disability benefits; conference report on H.R. 7093.  
Dec. 21, 1982. (97th Congress, 2d session. House. Report no.  
97-985)

U.S. Congress. House. Committee on Ways and Means. Social  
Security Disability Benefits Reform Act of 1984; report on  
H.R. 3755. Mar. 14, 1984. (98th Congress, 2d session. House.  
Report no. 98-618)

----- The Tax Reform Act of 1983;  
report on H.R. 4170. Oct. 21, 1983. (98th Congress,  
1st session. House. Report no. 98-432)

U.S. Congress. Senate. Committee on Finance. Rate of certain taxes  
paid to Virgin Islands; report on H.R. 7093. Oct. 1, 1982.  
(97th Congress, 2d session. Senate. Report no. 97-648)

----- The Social Security Act disability programs; staff data and  
materials. Washington, U.S. Govt. Print. Off., Sept. 1983.

----- The Social Security disability insurance program;  
staff data and materials. Washington, U.S. Govt.  
Print. Off., August 1982. 257 p.

----- Social Security Disability Amendments of 1984; report on S. 476.  
May 18, 1984. (98th Congress, 2d session. Senate. Report no.  
98-466)

U.S. Congress. Senate. Committee on Governmental Affairs,  
Subcommittee on Oversight of Government Management.  
Oversight of the Social Security Administration disability  
reviews. Washington, U.S. Govt. Print. Off., August 1982.  
46 p.

CHRONOLOGY OF EVENTS

- 05/22/84 -- Senate passed H.R. 3755, by a vote of 96-0, substituting the provisions of S. 476 affecting disability termination and related administrative procedures.
- 05/18/84 -- Senate Finance Committee reported S. 476 with modifications.
- 03/27/84 -- House passed H.R. 3755 (410-1) with various measures affecting disability termination and related administrative procedures.
- 03/14/84 -- House Ways and Means Committee reported H.R. 3755.
- 02/02/84 -- House passed with amendment H.R. 3391, dropping from the bill a Senate-passed 6-month extension of provision allowing benefits to be paid while a terminated beneficiary appeals his or her case.
- 01/23/84 -- Senate Finance Committee held hearing on disability reviews, at which Administration announced its opposition to pending legislation and an ending of a temporary moratorium on reviews, imposed in December 1983.
- 12/09/83 -- Administration announced that termination notices dated Dec. 7, 1983, or later would not be sent out.
- 11/18/83 -- Senate passed, but House failed to take up H.R. 3391.
- 11/17/83 -- House disapproved rule for floor consideration of H.R. 4170 (the Tax Reform Act of 1983), which included disability provisions previously recommended in H.R. 3755 by Ways and Means Committee.
- Senate tabled Cohen/Levin amendment to Supplemental Appropriations bill with disability provisions similar to those recommended by Ways and Means Committee.
- 10/21/83 -- The House Ways and Means Committee reported out H.R. 4170, with the disability provisions contained in H.R. 3755.
- 10/11/83 -- President Reagan signed H.R. 4101 into law (P.L. 98-118), providing a 67-day extension of provision allowing benefits to be paid while a terminated beneficiary appeals his or her case.
- 10/06/83 -- House and Senate passed H.R. 4101.
- 09/27/83 -- House Committee on Ways and Means approved H.R. 3755.

- 08/03/83 -- House Subcommittee on Social Security recommends measure contained in H.R. 3755.
- 06/15/83 -- Senate adopted an amendment to suspend eligibility reviews of persons with mental impairments until eligibility criteria in the mental impairment area are revised (later dropped in conference).
- 06/07/83 -- Reagan Administration announced various measures to soften impact of new review process.
- 04/07/83 -- Senate Special Committee on Aging began two days of hearings on problems of terminating mentally-impaired persons from DI rolls.
- 01/12/83 -- President signed H.R. 7093 into law as P.L. 97-455.
- 12/21/82 -- Conference committee on H.R. 7093 filed report which was approved by both House and Senate, clearing the way for legislation to be sent to the President.
- 12/14/82 -- House approved an amended version of Senate-passed bill, H.R. 7093.
- 12/03/82 -- Senate Finance Committee bill (H.R. 7093) approved by full Senate with amendments offered by Senator Dole.
- 10/01/82 -- Senate Finance Committee reported out a number of measures to soften the effects of DI terminations as part of a Virgin Islands tax bill, H.R. 7093.
- 08/18/82 -- Senate Finance Committee held hearing on DI program, focusing on the CDI issue.
- 05/26/82 -- House Ways and Means Committee reported out H.R. 6181, Disability Amendments of 1982.
- 05/25/82 -- Senate Governmental Affairs Subcommittee on Oversight held hearing on continuing disability investigation (CDI) problem.
- 05/21/82 -- House Select Committee on Aging held hearing on CDI problem.
- 04/28/82 -- House Ways and Means Committee began markup on H.R. 5700 (later becoming H.R. 6181).
- 03/25/82 -- Subcommittee on Social Security of House Ways and Means Committee completed 3 days of markup on H.R. 5700, Disability Amendments of 1982.
- 03/17/82 -- House Subcommittee on Social Security completed 2 days of hearings on CDI problem and other DI administrative issues.
- 02/18/81 -- Reagan Administration announced plan to speed up 3-year CDI process as part of FY82 budget reductions.

06/19/80 -- President Carter signed P.L. 96-265, Social Security Disability Amendments of 1980, creating among other provisions the 3-year re-exam process.