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Statement of the Association of Administrative Law Judges, Inc.

Officers and Board

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Statement Of The Association Of Administrative Law Judges, Inc.*

Executive Summary

The operation of the nation's Social Security program is in disarray. In the case of the disability system, which is administered by the Social Security System [SSA] and disburses billions of dollars in benefits, pressure on the system is driven by the burgeoning caseload of claimants seeking benefits. Next year, 840 administrative law judges [hereinafter "ALJs" or "judges"] are expected to receive 500,000 new requests for hearing on claims already twice denied by the agency, with no new resources to cope with the increased caseload. The system for claims adjudication is antiquated, inefficient and legally inconsistent.

Congress has enacted an excellent program which the agency has chosen not to implement, or has simply undermined. The current crisis arises directly from two factors: first, the agency's unwillingness to follow the law; and second, mismanagement of the hearings process. The current structure of the federal benefits system is unnecessarily multi-layered, cumbersome, and unable to provide proper service to the public. At the hearing level, judges have no input in terms of management of personnel and other resources, resulting in frustration of the independent judicial function. Standards for determining eligibility vary from one adjudicative level to another, and vary geographically as well, resulting in unequal treatment in what purports to be a nationwide program. The agency is constantly at odds with the judges who adjudicate appeals from claims it denies, and tries by various means to control the judges, primarily by control of staff and resources.

We propose that the system of claims adjudication be entirely overhauled. We submit that the current crisis cannot be remedied unless two events occur: first, that the agency be required to follow the law at every level of claims adjudication; and second, that

* This statement was prepared by the officers and Board of the Association of Administrative Law Judges, Inc., and sent to Vice President Al Gore and his Task Force on Reinventing Government: The National Performance Review on August 27, 1993.

control of the hearing process be restored to the judges. We therefore make the following recommendations:

Recommendations To Reform SSA Disability Benefits System

A. Fundamental changes in the adjudicative process

1. Passage of the "Reorganization of the Federal Administrative Judiciary Act"¹ to accomplish economies of scale, eliminate layers of management, ensure the independence of adjudicators from improper agency influence, and streamline the personnel structure by replacing it with an efficient system with a lower supervisor-to-staff ratio.
2. Increase the number of judges to a level sufficient to meet the current workload crisis, together with adequate support staff.
3. Require the agency to adhere to the provisions of the 1984 Social Security Disability Reform Act, in particular those requiring uniform standards of adjudication at all determination levels. It is the failure of the agency to follow the law at the first two levels of adjudication [initial and reconsideration at DDS] that puts the system into inevitable breakdown.
4. Require the agency to discontinue inconsistent policies which impact adversely on the hearing process.
5. Improve the quality of appellate review of ALJ decisions, to provide for decisions of precedential value and thus a uniform system of disability law.

B. Fundamental changes in the disability program

6. Fund and require the agency to perform continuing disability reviews to assure that only those who remain eligible continue to receive benefits.

¹Now pending in Congress: S 486 and H.R. 2586.

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7. Require the agency to implement and monitor meaningful substance abuse rehabilitation programs, as well as representative payee programs.
8. Require vocational rehabilitation in cases where such rehabilitation is likely to result in a productive work life for a claimant [e.g., for those whose condition is expected to improve, or who are disabled by vocational factors rather than at "listing" level severity].
9. Reconcile the provisions of the Americans With Disabilities Act with those of the Social Security Disability Act.

C. Procedural changes in adjudication²

10. Begin constructing the hearing file at the DDS level, and eliminate redundant documents before hearing.
11. Implement face-to-face interviews at DDS.
12. Eliminate the reconsideration determination.
13. Implement meaningful alternative dispute resolution [ADR] measures pre-hearing and make better use of the legal talents of staff attorneys.
14. Close the evidence after the ALJ hearing.
15. Streamline the decision writing process by, for example, providing for oral decisions from the bench; entry of minute orders; or authorizing judges to order claimant's counsel to prepare a proposed decision in cases where the claim is approved.

²Some of these recommendations have already been proposed by OHA. Only the ADR has been actively pursued.

Discussion**A. Current Organization.**

The current field organization of the office of Hearings and Appeals [OHA] of the Social Security Administration [SSA] consists of approximately 840 administrative law judges [ALJs] who are located in approximately 140 hearing offices throughout the nation. SSA administrative law judges are delegates of the Secretary of HHS appointed pursuant to the Administrative Procedure Act as independent adjudicators. The current head of OHA is an Associate Commissioner appointed by the Commissioner of SSA. In brief, its current organizational structure consists of:

Central Office: Office of the Associate Commissioner, and Office of the Chief Administrative Law Judge

Regional Offices: Ten separate regions throughout the country that correspond roughly to the eleven federal circuit courts of appeals. Each region consists of a regional chief administrative law judge and staff.

Hearing Offices: 140 on-site field offices consisting of judges, who conduct hearings and decide cases, and support staff. Each hearing office has a chief judge and office manager.

Other associated entities are (1) the disability determination services [DDS], which are field offices within each state that adjudicate the claims initially and on reconsideration, and (2) the Appeals Council, which is the Secretary's administrative appellate body. The Appeals Council reviews cases on appeal from administrative law judge decisions and makes certain policy determinations.

B. Nature of the work.

The majority of OHA's work concerns claims for disability benefits under the insured portion [Title II] of the Social Security Act or under the supplemental security income [Title XVI] provisions of the Act [42 U.S.C.]. The ultimate issue in a disability

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matter is whether the individual claimant suffers from a medically determinable impairment that renders him or her incapable of substantial gainful activity for a period of at least 12 months. To answer this question, a five step sequential evaluation process has been promulgated for application at all levels of administrative adjudication (20 CFR 404.1520 et seq).

Such a claim may undergo as many as four levels of administrative review:

1. an initial determination by disability examiners at DDS. If the claim is denied at this level and appealed, it undergoes...
2. a reconsideration determination by different disability examiners at the same DDS office. If the claim is denied at this level and appealed, it undergoes
3. a formal hearing is held by an administrative law judge, who issues a decision that may become the final decision of the Secretary. If the claim is denied tattoos level and appealed, it undergoes...
4. review by the Appeals Council. A decision of the Appeals Council may be challenged by a complaint in the federal district court.

Current data indicate that few claims that are denied by DDS at the initial review are changed on reconsideration by DDS. In contrast, approximately 75% of those claims appealed from the DDS reconsideration denial are reversed and granted by the administrative law judge. Systemic problems explain this disturbing disparity, an issue addressed below.

In FY 1992 OHA had a record year: it received approximately 391,000 requests for hearing. These numbers continue to increase and the projections for FY 1993 extend to nearly 500,000 requests for hearings which further stresses the capacity of this agency to meet this work load. During this same period no additional administrative law judges were hired and there were fewer support staff on duty. In October 1991 there were 860 ALJs on duty; this number had decreased to 819 by February 1993 and only recently rose to 840. During this same time period the field staff has declined from 4,256 to 4,094 persons.

Given that OHA is the hearing level adjudication arm of SSA, its work is labor intensive and any reduction in personnel has an immediate impact on its capacity to hear and decide cases. The immediate result is delay for the claimants.

As we explain in further detail below, the judges have continually risen to the challenge of confronting the tidal wave of hearing requests. However, the recent unprecedented increase in hearing requests raises alarms. The agency knows how many claims are filed, how many are denied by DDS, and what percentage is appealed³. As the onslaught of work continued, OHA has consistently asked the agency for funds for more judges, more staff, and more resources. Yet most of these requests have been denied. To our knowledge, the agency did not allow OHA to testify when it (the agency) asked for a \$300 million budget supplement in the March 1993 hearing on the President's Stimulus and Investment Proposals Affecting SSA, before the Subcommittee on Social Security of the House Ways and Means Committee. Indeed, OHA now operates with skeletal resources.

Additionally, the pressure of the burgeoning caseload has resulted in such concern in the bureaucracy that the highest priority is to dispose of cases quickly and get them out of the way; whether the decisions are right or not is secondary. As a result, many judges feel tremendously pressured simply to issue large numbers of decisions. Judges are trained to issue decisions that are factually and legally sufficient. Production demands such as those now being imposed by the agency make it impossible to issue a high quality product that is fair, just, and sustainable in the federal courts. Not only is this state of affairs disheartening to the judges; the public and the people claiming benefits deserve better.

³In 1992 SSA received 1.8 million applications and allowed only 42%. Of the 58% denied (1.1 million), 48% (505,000) appealed. On reconsideration 17% (86,000) additional claims were granted and 83% (420,000) were denied. Seventy percent (294,000) appealed to the ALJ level. Forty percent of all claimants (721,000) dropped out before a hearing (595,000 before, and 126,000 after reconsideration). 1992 Green Book, H.R. Committee on Ways and Means, Overview of Entitlement Programs (May 15, 1992), p. 61.

Data from the Appeals Council fluctuate depending on which era one wishes to study. In the past, the Appeals Council and the agency, particularly during the 1980's, targeted decisions favorable to claimants for scrutiny. In later years, as the agency struggled with the decisions in the federal courts and the conflict such decisions created with agency policy, the Appeals Council targeted unfavorable decisions, often in an effort to "educate" administrative law judges by remanding cases for re-adjudication in accordance with policy, while ignoring the time-honored "substantial evidence" test. The latter program increased the case backlog.

C. Adjudicative Standard[s].

The agency guidelines for disability adjudication at the initial and reconsideration levels are set forth in the Program Operations Manual [POMS]. In contrast, administrative law judges apply legal principles to disability claims, and thus are guided by statute, regulation and case law. These standards are not consistent and frequently lead to different results on the same fact situation.

More often than not, the inconsistency between the two standards is not reconciled. For example, in the last decade, the federal courts have established important rules concerning adjudication of pain; evaluation of treating physicians' opinions; and the viability of substance abuse as a disability. These standards are not employed at the DDS level. As a result, the DDS determinations often require reversal by the administrative law judge. It is this difference in standards that accounts for much of the backlog at OHA and the high rate of reversal of DDS decisions by administrative law judges.

D. The need for reform in the OHA administrative process.

SSA/OHA and its administrative law judges have a decades-long legacy of conflict. This conflict was exacerbated in the early 1980's, when the then-new administration instituted draconian efforts to reduce the disability rolls, often terminating benefits without a hearing. SSA administrative law judges, applying constitutional and legal principles to disability claims, responded by reinstating thousands of claims. This

tension between the "program" side of the agency and the "due process" side of the agency led to the infamous Bellmon review which led Congress and the federal courts to take action protecting claimants.⁴

That tension remains unresolved to this day. For example, with the alarming increase in disability claims, the agency's current agenda is to process claims quickly. In short, its primary goal is for judges to handle cases quickly, in volume, and in so doing to adhere to the "program" or "policy" established by the agency. As one can see from the American court system throughout the land, due process is, however, inherently time-consuming and not as efficient as agency managers would wish. This is as true in administrative agency adjudication as it is in any court system. Thus, the need for speed and policy necessarily conflicts with the need to assure due process for each claimant.

The ALJs and support staff of OHA have a long and proud history of hard work and service to the public. In 1975 the average number of dispositions per administrative law judge per month was 16. The staffing ratio was 2.9 employees per judge. In FY 1992 the average per judge disposition was 36.6 with a staff ratio of 3.35 per judge. This evidence shows that the judges have increased their dispositions by 128% while the staffing ratio has increased by only 15.5%. It further shows that the judges have increased their dispositions by 725% more than the increase in staff. This is a remarkable performance especially in view of the fact that the cases have become far more complex, more voluminous, require the use of more experts, have more lawyers appearing and are more time consuming. This performance represents a tremendous public service and contribution to the administration of justice. It demonstrates that the corps of administrative law judges and support personnel of OHA are motivated by the highest

⁴The inevitable result was that the courts created a body of caselaw that incorporates many more "subjective" [claimant-based] tests than were included in the original, more "objective" provisions of the Act.

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professional standards. But the time has now come when more production cannot be squeezed from the judges.

A historical review of OHA clearly establishes that the root cause of the conflict between the agency and its administrative law judges results from the agency's inability to accept the concept of independent administrative adjudication, as provided in the Administrative Procedure Act. This conflict and controversy is well documented. Congressional hearings in 1975, 1979, 1981, 1983 and 1988; numerous federal court decisions; the recent study completed by the Government Accounting Office [GAO] and the report of the Federal Court Study Committee have clearly established that the problems are systemic. These congressional hearings, decisions and reports have demonstrated that historically the agency has lacked an appreciation for the role of administrative law judges as independent decision makers within the agency. The GAO report specifically found low morale among the administrative law judges as well as the support staff. The background materials for the Federal Court Study Committee stated: "Such tension is inevitable in a system which houses supposedly independent adjudicators within a misoriented department."

In 1983 the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs in the United States Senate conducted a hearing which inquired into the role of the administrative law judge in the Title II Social Security Disability Insurance Program (S. PRT. 98-111). The Committee issued its findings on September 16, 1983. The principal finding of the Subcommittee was that the agency was pressuring its ALJs to make decisions approved by the agency.

The Committee further found that the agency was increasing the rate at which administrative law judges were expected to decide cases (the disposition rate), thereby reducing the quality and quantity of time that an administrative law judge had to devote to each case and further lessening the opportunity for the judge to develop additional evidence. The conclusions of the Committee are set forth in part as follows:

"The APA mandates that the ALJ be an independent, impartial adjudicator in the administrative process and in so doing separates the adjudicative and prosecutorial functions of an agency. The ALJ is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stands between the claimant and the whim of agency bias and policy. If the ALJ is subordinated to the role of a mere employee, and instrument and mouthpiece for the SSA, then we will have returned to the days when the agency was both prosecutor and judge."

In the case of *Association of Administrative Law Judges, Inc. v. Heckler*, 620 F. Supp. 1123 (1984), the Court found that the Social Security Administration had implemented the Bellmon Review Program in a manner that pressured judges to issue fewer allowance decisions. The Court stated as follows:

"The evidence, as a whole, persuasively demonstrates that the defendants retained an unjustifiable preoccupation with allowance rates, to the extent that the ALJs could reasonably feel pressure to issue fewer allowance decisions in the name of accuracy. While there was no evidence that an ALJ consciously succumbed to such pressure, in close cases, and, in particular, where the determination of disability may have been largely on subjective factors, as a matter of common sense, that pressure may have influenced some outcomes."

In sum, the Court concludes that defendants' unremitting focus on allowance rates in the individual ALJ portion of the Bellmon Review Program created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof. Defendants' insensitivity to that degree of decisional independence the APA affords to administrative law judges and the injudicious use of phrases such as "targeting," "goals" and "behavior modification" could have tended to corrupt the ability of administrative law judges to exercise that independence in the vital cases that they decide.

The recent report of the Federal Courts Study Committee addressed the problems in the Social Security Administration Hearing System. The report stated as follows:

"Recent experience suggests that the process is vulnerable to unhealthy political control. The Social Security Administration has made controversial efforts to limit the number and amount of claims granted by the administrative law judges, leading to widespread fears that the judges' proper independence has been

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compromised. (And the Appeals Council of the Social Security Administration lacks even the protection that the Administrative Procedure Act gives the administrative law judge.)"

In a study titled *Judges, Bureaucrats, and the Question of Independence*, D. Cofer demonstrated that management-minded bureaucrats and APA judges cannot live under the same roof and that the current situation is a disservice to the American people.

It should be noted that even the Department of Health and Human Services has questioned the wisdom of having the judges employed by the same agency whose cases they decide. In a May, 1981 Management Oversight Review Report on the Office of Hearings and Appeals and the Social Security Administration, the Office of Inspector General found that the appeals process could be more effectively located outside the Social Security Administration. The report highlighted the appearance of impropriety and the incongruity in having one arm of the Social Security Administration making the basic eligibility determinations in cases while the Office of Hearings and Appeals arm of the Social Security Administration adjudicates that decision. It went on to question the wisdom of the arrangement of putting the Office of Hearings and Appeals under the direction of an Associate Commissioner because the Social Security Administration staff controls the resources, space, equipment and supplies of the Office of Hearings and Appeals which, if restricted, could indirectly control the number and quality of the hearings held.

The fundamental problem in the Office of Hearings and Appeals, as currently constituted, is that the responsibility and accountability for the entire hearing and decisional process is placed upon the individual administrative law judge, yet the judge has been given no authority to carry out this mandate. Some years ago a "managerial" decision was made to take away from the administrative law judge all supervisory authority over hearing office support personnel, including staff attorneys, decision writers, clerical support staff and typists. The result of this office configuration is that administrative law judges have no power to expedite the work or assure that it is done correctly. Authority for case control, resource improvement and management has been given to an ever enlarging group of non-

legally trained bureaucrats who have no understanding of the concepts underlying the Administrative Procedure Act or the concept of administrative due process. With respect to the current parallel rather than cooperative system of management, we experience staff who are not supervised by judges but by others, who assess their performance. Thus, many times judges make requests only to find that they have been countermanded or ignored by staff. Judges in some offices find that staff attorneys are ignoring their instructions in drafting decisions, resulting in much lost time while the judge makes the appropriate corrections. The judges have become demoralized, especially with the added pressure to issue a large volume of cases, because of their frustration in trying to assure that their work gets done appropriately. In many offices, this has resulted in numerous unhealthy byproducts which undermine the ability of the judges to do the work they are hired to do: confusion, improper priorities, delay, lack of communication. At the least, a work product of lesser quality for this agency has resulted in more remands of decisions and a longer processing time for claimants.

OHA also currently experiences much waste due to poor hiring practices, poor use of professional and staff personnel, and inexplicable travel policies. For example, in response to a GAO recommendation in 1989, the agency hired 200 new judges in 1990 and 1991. However, they were not placed in offices according to workload needs. Rather, some new judges went to offices that were already adequately staffed, and therefore when they arrived, they had insufficient work at that locale; while other offices did not get the judges they needed. As a result, judges from the overstaffed offices were and continue to be sent traveling nationwide, at considerable cost to the public, to address the backlog in those areas that need help. Another example is that currently, because staff respond only quixotically to judges' requests, many judges type their own correspondence and envelopes and do their own xeroxing. This is a poor use of professional personnel, who receive a much higher salary than clerical staff, and thus the cost of clerical work performed by a judge is a waste of taxpayers' money.

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OHA has thus been plagued for over a decade with an inefficient management system. This situation has resulted in a bloated bureaucratic structure consisting of multiple, duplicative, administrative layers which respond to a centralized control process. This organization has created a network of Regional Offices which micromanage the field offices, which also have a local management team. The only function of the Regional Offices is to act as a funnel for actions from Central Office, an unnecessary function because modern communication systems permit Central Office to correspond directly with the field offices. The existence of these management practices has been documented by the 1991 Process Review Report of OHA that was prepared by SSA. This report concluded, in part, that OHA employees receive considerably less training and fewer career development opportunities compared to other organizations within SSA; OHA is faced with a variety of personnel and staffing-related problems; and the facilities, equipment and furniture for OHA offices are not always conducive to high quality work. That the hearing process is held in such low esteem is illustrated by the fact that OHA field offices are just now getting fax machines installed; and the fact that they are just now getting computers, the first of which are assigned not to the judges or attorneys who issue decisions, but to the bureaucrats who issue reports to headquarters.

With respect to micromanagement, SSA has of late been using the term "Total Quality Management." Actual experience shows that while the agency and OHA employ the term "Total Quality Management," they do not in practice understand or implement its principles. The essence of Total Quality Management is horizontal involvement of the work force, with consequent investment and empowerment of each employee. This principle is completely at odds with the goals of control and micromanagement now present within OHA. The result has been an expression in favor of Total Quality Management, without any overt attempt to implement the system.

In addition, OHA has been impaired by inconsistent policies of other branches within SSA which have impacted upon its ability to perform efficiently. As an example, the

recently instituted Quality Assurance Program has created an elaborate 22 page checklist to review ALJ decisions, which are frequently much less than 22 pages in length. Twenty-five judges have been taken from their judicial duties to perform quality assurance review, another inroad on our ability to adjudicate the backlog of claims pending. At the same time the SSA Workgroup on OHA Workload Issues has suggested that, in view of the caseload crunch, judges issue short-form decisions and "limit editorial changes to initial draft decisions." The Office of Human Resources of SSA is simultaneously implementing a program which replaces OHA attorney decision writers with non-attorney writers. Thus, while appearing to demand a high quality legal product, the agency denies its judges the resources to meet the demand. Inconsistent policies of this type, of other branches within SSA, impact upon OHA in an adverse manner which is wasteful and inefficient. These practices result in a poor quality work product, a waste of resources and delay for claimants.

The judges have fought a long and hard fight to assure the integrity and impartiality of the administrative hearing process. During the 1980's, when SSA adopted a program which attempted to systematically deny many Social Security claimants administrative due process, the ALJs were the sole force in the agency which stood up against this program and protected the rights of the people appearing before them. The American Bar Association [ABA] subsequently issued a commendation to all ALJs in SSA for this public service. The award stated as follows:

Be It Resolved, That the American Bar Association hereby commends the Social Security Administrative Law Judge Corps for its outstanding efforts during the period from 1982-1984 to protect the integrity of administrative adjudication within their agency, to preserve the public's confidence in fairness of governmental institutions, and to uphold the rule of law.

We submit that SSA continues to undermine the APA-protected due process hearing rights of claimants. The SSA judges could not have performed their past heroic public service without APA protection. The need to continue a strong and independent judiciary protected in fact -- not merely in theory -- by the APA is more important today

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than ever. The agency is, in our view, intent on establishing a disability program without independent adjudicators.⁵

The need for systemic reform in the SSA hearing process is apparent. Legislative reform is necessary to provide the claimants with an administrative hearing system which meets the constitutional requirements of a fair hearing.

E. Recommendations.

The Association of Administrative Law Judges recommends that the SSA disability hearing process be reformed by adopting the following changes which in many situations will result in monetary savings and reduce claimant delay.

1. Adopt the Reorganization of the Federal Administrative Judiciary Act. This Act will reorganize the administrative judiciary into a unified corps of ALJs independent of the agencies, and will promote independence, efficiency, productivity, the reduction of administrative functions and provide economies of scale to better serve the public in the resolution of disputes. This reorganization is required because the nature of administrative hearings has changed. The hearings now resemble Article III court actions with most respondents represented by skilled counsel. This is a change from the classic agency licensing and rate-making model. This development requires a new system that will provide due process for all parties, without agency interference, without inconsistent policies, and without misuse of resources and personnel.

⁵In June 1993, an Update on Social Security Administration's Planning Process and Implementation of the Strategic Priorities set forth the following timetable for establishing a hearing process without APA due process protections:

FY 1993: Develop proposal for statutory and/or regulatory change to allow the use of case adjudicators other than ALJ for Medicare Part B cases.

FY 1994: Revise policy and procedural material and establish senior staff attorney position with magistrate authorities. Make recommendations on expansion of the use of senior staff attorney adjudicators in title II and XVI cases and Medicare A cases.

FY 1995: Develop proposal for statutory and/or regulatory changes to allow the use of case adjudicators other than ALJs for title II and XVI and Medicare Part A cases.

Preliminary figures from the Congressional Budget Office suggest the Act will result in tremendous cost savings.

2. Increase number of judges and support staff. The increase in caseload can partially be addressed by returning the SSA judges corps to its 1980's size of 900 judges together with adequate support staff -- not supervisors but persons who work on cases. This increase in personnel will provide OHA with the ability to reduce the processing time for claimants by handling the cases in a timely manner.
3. Implement Social Security Benefits Reform Act of 1984. This Act directed the Secretary to establish by regulation uniform standards to be applied at all levels of determination, review and adjudication in determining whether individuals are under disabilities. This mandate has not been implemented. Our best estimate is that if the agency required the same standard at every level of adjudication, as required by the 1984 Act, the beneficial results would be enormous: (1) deserving claimants would be paid earlier; (2) there would be a 30% to 40% lower appeal rate to the hearing level; (3) there would consequently be no backlog as we see now; and (4) the reversal rate at the administrative law judge level, rather than being at 70-75%, would decline to approach that of a true appellate system.
4. Discontinue inconsistent policies within SSA. Inconsistent policies of other branches within SSA must be discontinued. These policies have adversely impacted upon the ability of the judges to function efficiently and have resulted in lesser work product and delay for claimants.
5. Improve quality of appellate review of ALJ decisions. The quality of appellate review of ALJ decisions at the Appeals Council level should be improved to provide for a system of written opinions with precedential value. This change will create a system of law that is national in scope instead of the present patchwork process. The disability law will then have consistency which will provide predictability and reduce

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the number of cases that are now remanded after appeal. If the quality of appellate review of the Appeals Council can not be improved, it should be abolished.

6. Reinstate continuing disability reviews. The agency labors under a crushing volume of claims, without adequate staff to monitor the progress of any one claim. We are particularly concerned that claimants continue to be paid for years, often due to the fact that the agency lacks personnel to review the case, update the facts, and determine whether the condition continues to be disabling. Judges often, in granting claims, request review in a 12 to 24 month period, but these reviews are not actually done. Despite the initial cost in personnel time, we believe the investment in personnel will ultimately result in considerable cost savings to the people of the United States. It should result in returning some claimants to a productive life. We are concerned that given the finite resources of the disability trust fund, those funds must be preserved for truly deserving future claimants, and not exhausted simply because the agency cannot review the cases.
7. Substance abuse rehabilitation. Largely because of court decisions and developing medical principles, the Secretary recognizes that substance addiction may be disabling in and of itself. While the disability program mentions the need for rehabilitation, many substance abusers end up receiving benefits but no treatment. Not only is this distasteful to the public; more importantly, the government often ends up funding at least a portion of the drinking or drugging of claimants. We recommend funding of a meaningful drug and alcohol rehabilitation program, with strong requirements for attendance, possible time limits for receipt of benefits, and close supervision and review of the claimant's disability. It is also imperative to monitor the representative payee program.
8. Reinstate vocational rehabilitation. We further recommend funding of a meaningful vocational rehabilitation program. Many claimants over time assume what is commonly known as a "disability conviction," a state of mind wherein one presumes

he/she cannot be productive. Certainly the receipt of disability benefits without an accompanying rehabilitation program reinforces that state of mind, and the downward spiral it engenders. We are strongly convinced that investment in vocational rehabilitation, followed by actual productive trial work, would ultimately benefit not only the claimant but society in general.

9. Reconcile the statutes. We also recommend that the interplay between the Americans with Disabilities Act [ADA] and the Social Security disability program be reconciled. The ADA envisions that, at considerable cost for employers, accommodations be made for the handicapped so that they can be put to work. Yet the disability program finds many handicapped disabled who would otherwise be employable with accommodation required by the ADA.
10. Start constructing the hearing file at the DDS level. At the present time a new file is created at each level of the disability process. This inefficient method should be replaced by a system which adds exhibits to the disability case file at each succeeding level. This initiative will save substantial worker hours and money at the OHA level.
11. and 12. Implement a face to face interview at initial determination level. The interview should be informal and accessible to claimants. A uniform adjudication standard should be used. The appeal to reconsideration at the DDS should be abolished because of the ineffectiveness of the review at this level in the past. This change will reduce the number of requests for hearings at the ALJ level.

Alternative dispute resolution. We recommend broadening the means of resolving claims pre-hearing, and expanded use of the legal talents of our staff attorneys. The goal should be to identify meritorious claims, grant them without a hearing [and thus earlier], and free up judge time for more difficult cases. Other possible means of pre-hearing resolution could include a summary judgment provision when the issues are entirely legal and the facts not in dispute.

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13. Close record after ALJ hearing. The evidentiary hearing record should be closed after the ALJ hearing is completed. An exception should be provided for unrepresented claimants and for newly discovered evidence. This change will encourage attorneys to be more diligent at the hearing and will avoid the numerous remands for evidence first presented at the Appeals Council or district court level. It will also develop a doctrine of administrative finality, reduce the hearing caseload, reduce claimant delay and save money.
14. Streamline OHA decision writing process. In cases where the claim is approved, the judge should have authority to issue minute orders, rule from the bench, and/or order the claimant's attorney to prepare a proposed decision for the judge's consideration. The psychiatric review technique form data and attorney fee order should be incorporated into the ALJ decision rather than being appended as separate forms. These changes will reduce the requirement from three forms to one for each written decision and will save substantial worker hours and money at the hearing level.

**NATIONAL ASSOCIATION OF
ADMINISTRATIVE LAW JUDGES**

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If yes, how many people? _____

Additional Comments:

The NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDGES needs your input to meet our common goal of professionalizing the administrative law judges, administrative hearings officers, our colleagues, our agencies, those attorneys and citizens who come before us for justice.

Please send your ideas, suggestions, and queries to:

Judge Edward J. Schoenbaum, Editor-in-Chief
Journal of the National Association of Administrative Law Judges
1108 South Grand West
Springfield, Illinois 62704-3553

Please photocopy, fill out and mail

**NATIONAL ASSOCIATION OF
ADMINISTRATIVE LAW JUDGES**

c/o National Center for the State Courts
300 Newport Avenue, Williamsburg, VA 23187-8798

Membership Application and Questionnaire

Please answer all questions fully. Type or print.

1) Name: _____
(last) (first) (m.i.)

2) Home Address: _____
(street) (apt.)

(city) (state) (zip)

3) Home Tel. #: (____) _____ Bus. Tel. #: (____) _____

4) Title (ALJ, Hearing Officer, etc.): _____

5) Name of Agency (in full): _____

6) Business Address: _____
(street)

(city) (state) (zip)

7) Please Send My Mail To: _____ Home _____ Business Address

8) Date Of Birth: _____

9) Are You An Attorney At Law? _____yes _____no

10) My Present Position Is: _____elected _____appointed for fixed term
_____appointed for indefinite term _____competitive civil service
_____other (explain): _____

11) My Position Is: _____full time _____part time _____per diem

- 12) Year Service Began: _____
- 13) Brief Description Of Job Duties: _____

- 14) Academic Degrees & Years Awarded: _____

- 15) Awards, Honors, etc.; Other Affiliations (optional): _____

=====

16) Optional & Confidential: For Use By The Committee On Compensation Of Administrative Law Judges & Hearing Officers.

Salary (or salary range) for your present position:
 \$ _____ per _____. Salary fixed by:
 _____ statute _____ civil service board _____ appointing authority
 _____ collective bargaining _____ other (please explain):

=====

17) _____ I am now a member of this association. (I previously joined NAALJ or its predecessor, NAAHO.)

18) Signature: _____
 Date: _____

Please photocopy, fill out and mail with your check for \$35.00.

