



BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

Genevieve Richardson
Executive Director

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Administrative Conference of the United States
1120 20th St. NW, Suite 706 South
Washington, DC 20036

Submitted by email to: info@acus.gov

RE: Identifying and Reducing Burdens in Administrative Processes

To Whom it May Concern:

I am writing on behalf of Bay Area Legal Aid, the largest provider of free civil legal services for low-income people in the San Francisco Bay Area. We represent clients in seven Bay Area counties with a variety of civil legal matters, including access to public benefits and housing, consumer law, family law, immigration law, re-entry legal services, and youth justice. We join the comments submitted by the Western Center on Law & Poverty, and write separately to address issues relating to the identification and reduction of barriers to access to public benefits, both through the Social Security Administration and other state and local agencies.

Barriers to Accessing Services

Our clients and attorneys face considerable barriers in trying to access benefits or services through the Social Security Administration (“SSA”) and other state and local social services agencies. The Social Security Administration’s toll-free phone line is notoriously unreliable and difficult for clients to use. State and local social services call centers, and Direct Express customer service lines are likewise unreliable and difficult for clients to navigate.

These barriers were further exacerbated during the pandemic, as many physical offices were closed, or had limited capacity, and phone access remained limited. Our clients typically have limited income and resources, so any additional barriers to accessing benefits and services are magnified by limited access to phone and internet service and limited resources to be able to travel to offices. SSA and local agencies have reportedly struggled with attrition and understaffing since the start of the pandemic, which has only worsened over time. Maintaining adequate staffing will require additional funding¹ and better training and supervision. A recent survey of federal agency employees found that SSA was the “worst” federal agency at which to work². This is likely due in part to years of underfunding and understaffing, but also due to excessive administrative burdens placed on SSA staff, including responsibility for annual financial reviews, during which workers must scrutinize an individual’s income, expenses and “in-kind support” and SSA regulations that require frequent continuing disability reviews (CDRs) of people who have been previously found to be disabled, while working with a population that includes people experiencing homelessness, people living in deep poverty, and people with significant mental and physical impairments, contributing to burnout and attrition.



Lack of Reliable Mail Access

In addition to challenges with accessing SSA and other public social services in person and by phone, many of our low-income clients lack access to reliable mail service³. People who are experiencing homelessness, in particular, often lack a reliable mailing address, and can not consistently receive mail timely through the USPS, via General Delivery, or through a local government agency or community-based organization. As such, clients often do not receive mail regarding their eligibility for Social Security or other public benefits or housing in a timely manner. ACUS should encourage federal agencies, including USPS, to provide greater access to mail delivery services, or require recipients of federal funds to ensure that mail can be received at an agency address or other reliable address. SSA and other federal, state and local agencies should allow additional time, or accept good cause, for the late receipt or filing of necessary paperwork, and allow for alternative means of communication, online, by email, text messages, or the use of applications or service kiosks.

Extension of COVID Flexibilities

SSA and other agencies provided for greater flexibility for late filings during the pandemic, and that flexibility should be allowed to continue or become permanent. SSA also allowed claimants to use electronic signatures and verbal confirmation during the pandemic⁴, so that individuals would not need to get a signed document with a wet signature to a local office. These flexibilities should be extended and made permanent.

Lack of Adequate Notice

Applicants for and recipients of Social Security or other public benefits often face additional barriers related to inadequate notice and other due process violations in administrative programs. In particular, notices from SSA related to alleged overpayments, or cessation of benefits due to financial or non-disability issues, often tend to be inadequate. They often lack sufficient information to explain the basis for the alleged overpayment or other decision, or fail to provide documentation of how the alleged overpayment was calculated, leaving the individual uncertain as to how to respond.

Lack of Adequate Language Access

SSA notices and other correspondence are generally not available in languages other than English. California state agencies and counties are required to include a multi-lingual insert⁵ in mailings so that people with Limited English Proficiency are able to call to request translation or interpretation. SSA does not include that kind of information with their mail. Despite having a Language Access Plan, SSA has struggled to provide adequate language access services to LEP clients. Few of SSA's forms and notices are translated into other languages. While bilingual staff and phone interpreters are often available, we still hear complaints from clients who were not provided with adequate interpretation, were told that an interpreter is not needed for a physical



medical exam, or who were asked to have a family member translate or interpret for them. SSA should be required to update their language access plan to comply with EO 13166, make essential forms and notices available in other languages, and ensure that adequate language access services are provided throughout SSA programs, including by state agencies and consultative examiners.

Barriers to Access to Disability Benefits in the Disability Determination Process

SSA delegates the initial and reconsideration disability determination process to state agencies known as Disability Determination Services (“DDS”) agencies⁶. These state DDS agencies are tasked with developing the medical record and making initial disability determinations. Our clients face significant barriers to accessing disability benefits due to DDS policies and practices. DDS has also faced significant staffing challenges during the pandemic, which has contributed to a backlog of disability benefits cases. In our experience, DDS has resorted to over-reliance on consultative examinations (“CEs”) by non-treating medical sources who contract with the state agency. These exams are often cursory, brief examinations, resulting in boilerplate reports, often filled with inaccuracies and inconsistent or unsupported findings. SSA should ensure that state DDS provide adequate oversight of the quality of CE exams and reports, and make every reasonable effort to obtain necessary medical information from treating medical sources.

Over-reliance on Non-treating CE Reports and Failure to Properly Consider Treating Source Records and Opinions

SSA and DDS are required to make “every reasonable effort” to obtain medical evidence from treating medical sources. 20 C.F.R. § 416.912(b). SSA and DDS may schedule a consultative exam with a non-treating medical source “If we cannot get the information we need from your medical sources.” 20 CFR §416.919a. SSA regulations further state that, if they are qualified and willing to do so, “your medical source will be the preferred source for the purchased examination or test(s).” 20 C.F.R. §416.919h. Nonetheless, SSA and DDS, sometimes at the request of an Administrative Law Judge (“ALJ”) routinely schedule CEs with non-treating consultative examiners without make every reasonable effort to request and obtain evidence from treating medical sources. SSA regulations state that “Generally, we give more weight to medical opinions from your treating sources” 20 C.F.R. §416.927(b)(2). Adjudicators are required to weigh evidence using several factors, including the examining or treating relationship, the length of treatment relationship and frequency of examination, supportability, consistency and specialization, which tend to favor giving greater weight to treating medical source opinions. 20 C.F.R. §§416.927(c) and or 416.920c(c). SSA and DDS should provide greater oversight to ensure that appropriate weight is given to the records and opinions of treating medical sources, that CEs are not inappropriately scheduled with non-treating sources, and to ensure adequate quality of CE exams and reports.

Federal court remand rates⁷ underscore the need for greater oversight of DDS and SSA hearing



decisions. 59% of federal court decisions regarding SSA decisions were remanded by the court for a new hearing or payment of benefits due to errors in the final agency decision. This remand rate suggests a lack of adequate review and oversight of decision-making at the prior administrative levels. In 2020, two of the most common reasons for federal court remands of SSA decisions were rejection of treating source opinions without adequate explanation, and inadequate support or rationale for the weight given to a consultative examiner opinion⁸. These frequent errors have tragic real-life consequences. It's estimated that 10,000 disability claimants die each year while they are waiting for a final decision regarding their eligibility for benefits⁹. The federal court remand rate is similarly high for appeals of continuing disability reviews¹⁰, meaning that people with disabilities, who were previously found disabled by SSA, are at risk of losing their benefits, and becoming homeless, while those appeals are pending.

Need for Greater Access to Representation

The Social Security Advisory Board has found that applicants for Supplemental Security Income ("SSI") are approximately twice as likely to have their claims approved at the initial application stage if they are represented¹¹. SSA's Equity Action Plan¹² identified barriers to access for claimants who are unrepresented, and noted that 34% are unrepresented at the reconsideration appeal stage, and 23% are unrepresented at the ALJ hearing. People who are subject to CDRs or age-18 redeterminations of their eligibility are likewise often unrepresented, as they are current recipients of benefits and have more difficulty obtaining representation from the private bar.

SSA and other federal agencies, as well as the USICH, should be encouraged to make efforts to support legal services and other non-profit and community-based organizations to increase access to representation for low-income applicants for and recipients of SSI.

Need For Better Data Collection and Analysis

SSA and DDS disability evaluation and decision-making are prone to subjectivity and explicit or implicit bias. Yet SSA fails to maintain adequate data, including racial and ethnic data, to be able to evaluate, identify and remedy bias. SSA and other agencies administering federally funded benefit programs should be required to maintain and evaluate such data.

Thank you for your attention to these important issues regarding barriers to access to administrative programs and processes, including essential safety net benefits.

Sincerely,

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Steven M. Weiss,
Regional Managing Attorney
Bay Area Legal Aid



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- ¹ <https://www.cbpp.org/blog/long-overdue-boost-to-ssa-funding-would-begin-to-improve-service>
- ² <https://www.politico.com/news/2023/04/12/the-5-best-and-worst-places-to-work-in-federal-government-00091602>
- ³ <https://wclp.org/resources/return-to-sender-how-an-unreliable-mail-system-harms-californians-living-in-poverty/>
- ⁴ <https://secure.ssa.gov/apps10/reference.nsf/links/11122021125633PM>
- ⁵ <https://www.cdss.ca.gov/inforesources/forms-brochures/translated-forms-and-publications/multilingual>
- ⁶ https://www.ssab.gov/announcements/new-ssab-report-on-the-challenges-facing-social-security-and-state-disability-determination-services-agencies/?mc_cid=0211862415&mc_eid=890bb82b1d
- ⁷ <https://nosscr.org/article/2022-waterfall-charts/>
- ⁸ https://www.ssa.gov/appeals/DataSets/AC08_Top_10_CR.html
- ⁹ <https://www.gao.gov/products/gao-20-641r>; <https://www.wthr.com/article/news/investigations/13-investigates/improper-social-security-disability-denials-appeal-attorney-application-requirements-benefits-indiana/531-781d8784-2797-4321-9961-d232de5cdbc2>
- ¹⁰ <https://nosscr.org/article/2022-waterfall-charts/>
- ¹¹ <https://www.ssab.gov/research/filing-for-social-security-disability-benefits-what-impact-does-professional-representation-have-on-the-process-at-the-initial-level/>, at Figure 7.
- ¹² <https://www.ssa.gov/open/materials/SSA-EO-13985-Equity-Action-Plan.pdf>