

Public Comments from Legal Aid of West Virginia on Nonlawyer Assistance and Representation in Federal Agency Adjudication

Legal Aid of West Virginia submits the following public comments in response to the Federal Register Notice requesting comments to the Administrative Conference of the United States (ACUS) relevant to an ongoing ACUS project, Nonlawyer Assistance and Representation in Federal Agency Adjudication. Nonlawyer Assistance and Representation; Request for Comments, 89 Fed. Reg. 130 (July 8, 2024).

Legal Aid of West Virginia (LAWV) is a statewide non-profit legal services organization providing free legal services to predominantly low-income West Virginians. LAWV has 12 offices statewide serving all 55 counties in West Virginia.

As to LAWV's perspectives concerning our staff's work as representatives and legal assistance providers in federal agency adjudication, we provide the following comments concerning Questions 3-7 in the Notice.

Question 3

LAWV has existed in its current form for 22 years and has provided nonlawyer and lawyer representation in federal agency adjudication since its inception and for approximately 40 years with the inclusion of our predecessor regional legal services organizations. Over the past 22 years, LAWV has reviewed and/or processed approximately 18,000 cases involving Social Security issues. LAWV currently has 13 non-attorney paralegals whose case workload includes handling claims before the Social Security Administration (SSA), and state public benefits cases before West Virginia state agencies. These employees are supervised by an attorney who is the project supervisor for the grant supporting this federal agency adjudication workload as well as by their local office supervising attorneys. The project supervisor is an attorney who handles federal court appeals in Social Security cases. In addition, LAWV has a public benefits attorney who represents clients statewide in a wide range of federal and state benefits cases. LAWV also employs one attorney who handles claims before the U.S. Department of Veterans Affairs (DVA) as well as other civil legal matters for veterans.

On average, our cadre of non-attorney paralegals devoted to SSA workloads have an average of seven (7) years of full-service experience working as claimant representatives before SSA (from initial filing through claim adjudication at the hearings and appeals levels, handling cases remanded by the Appeals Council and federal courts, post-entitlement issues, and overpayments). They also have experience providing supporting work to LAWV attorneys handling SSA appeal cases at the federal district court level. These nonlawyer representatives do not provide claim assistance before any other federal agencies.

Most are college graduates with between 1-37 years of legal experience, with an average legal experience of 13 years. Each undergoes significant in-house training and mentoring as well as continuing legal education programs sponsored by the National Organization of Social Security Claimant's Representatives (NOSSCR), the Substance Abuse and Mental Health Services Administration (SAMHSA), and SSA. SSA neither offers nor requires licensure of non-attorney practitioners, although each appointed representative is required to submit to the agency's Rules of Conduct and Standards of Responsibility for Representatives (Rules of Conduct). 20 C.F.R. §§

404.1740 and 416.1540 (2017); Social Security Act, 42 U.S.C. § 406 (a) (2016) (all claimant representatives who practice before SSA must comply with the Rules of Conduct).

Within our cadre of non-attorney paralegals working as claimant representatives before SSA, one (1) paralegal has multiple paralegal certifications, including Certified Paralegal (CP) and Advanced Certified Paralegal (ACP) designations in Social Security Disability and Civil Litigation through NALA, Inc. For each five (5)-year recertification period, a total of 50 clock hours of substantive legal and legal ethics continuing education is required. Another paralegal has a four-year degree in paralegal studies and has pharmacy technician licenses in two states, which she finds helpful in handling the medical components of her SSA cases.

All of our cadre of non-attorney paralegals handle cases in communities they reside in.

Question 4

Our non-attorney paralegals register with SSA's Appointed Representative Services/Business Services Online. They report that the process is fairly efficient but have experienced significant delays in obtaining ERE access, and in troubleshooting ERE access issues with agency staff. These delays and inefficiencies in managing the labyrinth of individuals, departments, and the like to cure the issue(s) are harmful to our clients who are low-income individuals residing in a rural state. When you are disabled and poor, large scale bureaucratic issues are yet another roadblock delaying our clients' claimant representatives from efficiently handling their cases and, at times, access to justice.

Question 5

Generally, yes. While Social Security hearings are to be non-adversarial, some Administrative Law Judges (ALJ) and agency staff do treat non-attorney representatives differently than attorneys. Some will challenge representatives regarding professional qualifications, but typically do not quiz lawyers regarding their skillsets, and some tend to be very argumentative, ruder to, and less cooperative with non-attorneys, while others treat non-attorneys no differently than lawyers.

For example, one staff member reported she saw an ALJ have a non-attorney representative read statements from the record by page, line number, and number of words the phrase was from the left margin, side-by-side with the ALJ at the bench, but had never seen an ALJ require that of an attorney. On another occasion, a staff member reported she once had an ALJ question her qualifications prior to the start of the hearing, and then turned and asked the client if the client felt like the non-attorney representative knew enough to be there.

In sum, our cadre of non-attorney paralegals views on ALJ treatment of non-attorneys can be summed up by the following staff statement, "For the most part, I feel like I am treated professionally but not necessarily equally."

Question 6

LAWV's federal administrative practice primarily focuses on Social Security-related matters. In this work, our lawyers and paralegals often collaborate on individual cases. While most of our lawyers are generalists, our paralegals concentrate almost exclusively on Social Security disability

applications and overpayment cases. Some of our paralegals, particularly those with decades of experience, are highly familiar with the system and can be even more effective advocates than many of our attorneys—at least, that is the general consensus among the attorneys who work with them at LAWV.

Our paralegals are exceptionally thorough in their casework. Their files are well-organized, and they take the time to build rapport with clients. They excel at case selection, diligently collecting and submitting medical records, and assisting clients in making—and keeping—appointments. They understand the issues at play and, generally speaking, write excellent briefs. They do an outstanding job representing clients in hearings, producing records that are well-prepared for appellate review.

Our attorneys routinely handle appeals to the federal courts, relying on the diligent work of our paralegals and the solid records they create. Without their support, we would not be able to represent nearly as many people—or do it nearly as well.

The project supervisor supervising our cadre of non-attorney representatives has remarked that these individuals are dedicated and strive to do the best possible job for their clients. She finds they are always actively seeking out learning opportunities to improve their knowledge and skills surrounding Social Security law. Further, she indicated there is not a high turnover for their positions, and some of LAWV's paralegals have been doing Social Security work for over 20 years.

Question 7

LAWV staff have indicated that one area that could be improved is the limitation in SSA rules, which only allow representation by an individual rather than a firm or organization. This creates difficulties, especially when there is a turnover of staff. Often, the new advocate or attorney at the firm cannot access client files or communicate effectively with SSA without explicit individualized authorization. The former advocate must also take steps to be formally released, which can cause problems if such an advocate is unwilling or unable to do so. This issue can also arise when an attorney is supervising the work of a paralegal or when an attorney wishes to take over a case from a paralegal—either for the purposes of appeal or to handle an administrative hearing. Allowing representation by a firm would be beneficial, particularly in cases where no fee is requested, as is the case with all of LAWV's SSA work.

LAWV's cadre of non-attorney paralegals universally support a policy change wherein SSA would require periodic mandatory training courses for all Social Security practitioners (including claimant representatives who do not charge or collect a fee) to make sure they understand ethics and procedures involved in effective practice.