

*Nonlawyer Assistance and Representation in Social Security Disability Proceedings:
Observations and Suggestions for Improvement*

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While attending Rutgers Law School in Newark, New Jersey, I served as a nonlawyer representative before the Social Security Administration (“SSA”) for one year under the auspices of the Rutgers Civil Justice Clinic (the “Clinic”).¹ This comment will provide an overview of my experience representing clients before the SSA. The comment will reflect on administrative procedures that could be improved and make recommendations for change. The comment will further reflect on ways to increase access to nonlawyer representation in administrative proceedings at large.

As a law student representative, the Clinic’s clients became my own, and I handled all aspects of the representation for each client from start to finish, as necessary during my one-year term. For some clients, that meant a more abbreviated representation to maximize an award of disability benefits that had already been granted. For others, their cases required everything from initial fact gathering via client interviews, to scheduling initial or remanded SSA hearings, and advocacy at the hearings, followed by appeals with the SSA Appeals Council of unfavorable decisions, and sometimes appeals in federal district court.² For every SSA hearing, I submitted a pre-hearing brief to the presiding Administrative Law Judge (“ALJ”), as well as a subsequent post-hearing brief with supplemental materials. I also appeared at and represented each client throughout the hearings, gave opening statements, invoked testimony from my clients whether by affidavit or direct examination, and cross examined vocational and medical experts that were appointed by the SSA.

I represented each client either by myself or alongside one of my peers in the Clinic. Professor Jon C. Dubin, Esq., an expert on social security disability law and the Associate Dean for Clinical Education / Clinical Program Director at the time, provided oversight.³ Although Professor Dubin appeared at SSA hearings as a formality, he remained silent as a general rule during the hearings and let us law students take over the representation. The SSA does not provide training for representatives, but I received numerous materials from the Clinic to prepare me for representation before the SSA. Professor Dubin provided one-on-one training and support throughout the program, and the Clinic held weekly meetings to discuss our cases. We additionally participated in mock proceedings to prepare for upcoming hearings, including simulated cross examination of vocational and medical experts.

The SSA has minimal requirements for nonlawyer representatives, which it presumes are met absent evidence to the contrary.⁴ To be appointed, a representative must complete and file a

¹ The social security disability section of the Civil Justice Clinic at Rutgers Law School, Newark has since become its own clinic and been renamed the “Economic Justice and Public Benefits Clinic.” For the avoidance of doubt, I write this comment on behalf of myself only, not any Rutgers clinic or staff.

² Clinical law students are permitted, with court approval, to practice before the New Jersey District Court pursuant to New Jersey Local Civil Rule 101.1(h). *See* N.J. L. Civ. R. 101.1(h), *Appearance by Supervised Law Students*.

³ Professor Dubin is currently the Director of the Economic Justice and Public Benefits Clinic at Rutgers Law School in Newark.

⁴ *See* 20 C.F.R. § 404.1705(b) (requiring nonlawyer representatives to be: (1) “capable of giving valuable help” to the claimant, (2) “not disqualified or suspended from acting as a representative” by the SSA, and (3) “not prohibited by

Form SSA-1696 (“Form 1696”), which is now available electronically. Both the representative and the client, or “claimant,” to the SSA, must sign the form. The process is especially efficient for claimants who have access to email; successful submission of a Form 1696 allows a representative to communicate with the local SSA field offices, including the nearest Office of Hearings Operations, which is critical for obtaining updates about a case, scheduling hearings, and following up on case-specific inquiries.⁵

Once a nonlawyer representative is appointed, the extent of the SSA’s oversight is that its employees will verify the representative’s identity on phone calls before discussing a claimant’s case. This is an area that could be improved, as the SSA does not have a uniform system for identifying representatives over the phone; some employees simply ask for the claimant’s social security number, while other employees require much more, sometimes obscure information before they will speak to a representative. At times I had to hang up the phone in order to find the required information and call back, because I was not expecting to need to know certain information and it was not readily accessible to me. This inevitably contributed to what was already prolonged delay in moving my clients’ cases forward because, when trying to contact the SSA, every phone call counts. More often than not, I could not reach a live person and could not leave a voicemail—if the call even went through in the first place (the phone lines are usually busy).

Nonetheless, phone calls were a critical component of my representation, as they were my primary source of information about my clients’ cases. For example, I relied on phone calls to find out which vocational expert would appear at a given hearing, if a medical expert was additionally going to appear, and to ask for the next procedural step when a client had specific needs. I also used phone calls to schedule my clients’ hearings. In fact, all of my communications with the SSA were done exclusively by phone and fax, with much time unironically dedicated to calling the SSA to make sure my faxes were received. While there is an obvious need for the SSA to keep personal and health information about claimants confidential, my inability to use email as any means of communication with the SSA was detrimental to the speedy resolution of my clients’ cases—it took several months sometimes to schedule just one hearing date for a client, simply because of phone tag on top of natural administrative delays.

The SSA could alleviate many of the procedural hurdles that claimants and their representatives face by allowing certain communications to take place by encrypted email. For instance, perhaps the SSA could allow email communications only for limited reasons such as to schedule a hearing or address other time-sensitive inquiries (which could be contained in a defined list on the SSA’s website, or at least framed with an illustrative list). We have had to file a few

law from acting as a representative”); Program Ops. Manual Sys. GN 03910.020 (same); *see also* 42 U.S.C. § 406(e) (listing additional qualifications for nonlawyer representatives to receive attorney’s fees from the SSA); 20 C.F.R. § 404.1717.

⁵ Claimants who do not have access to a computer, printer, or fax machine, either for financial or institutional reasons, have a more difficult time signing and returning the Form 1696 to their representatives. The process in such cases takes a bit longer, but still the single hurdle of submitting a Form 1696 streamlines the overall process for appointing a nonlawyer representative, as there are no other required steps.

expedited applications for disability benefits at the Clinic because of various emergency situations that arose for our clients; email communications could have made the administration of those urgent matters much easier for everyone.

Additionally, procedural processes could be streamlined if the SSA were able to have more staff available at a given time to address phone calls and handle general case management. I often had to wait multiple days if not a few weeks for a supervisor at the SSA to return my calls, in turn prolonging the life cycle of my clients' cases. Notably, opening up the use of email communications as an option for representatives would likely lower call volumes for the SSA and contribute to more efficient case management overall.

Procedural challenges aside, I was able to successfully represent my clients before the SSA as a nonlawyer representative. And in that role, I was generally treated with respect both over the phone by SSA employees and during hearings by the ALJs.⁶ However, I certainly benefitted from the extensive training provided by the Clinic, as well as my fortunate position of being in law school at the time, regarding how other people viewed me within the SSA and how well I was able to represent my clients. The average nonlawyer representative who has access to fewer, if any, resources, and is not in law school, is likely to be relatively unprepared to cross examine the SSA's experts, and unable do the legal research required for pre- and post-hearing briefs, including appellate briefs.⁷ Any procedural barriers that the average nonlawyer representative faces to providing effective advocacy only add to those pre-existing challenges.

Aside from my work before the SSA, I served as a nonlawyer representative before one other program: the NJ FamilyCare Aged, Blind, Disabled Program ("NJABD"), which provides health insurance for eligible individuals.⁸ One of my clients at the Clinic needed help navigating the NJABD program when she lost her health insurance, so I became her "authorized representative" and filled out an NJABD application for her.⁹ Serving as a representative before the NJABD program was relatively straightforward, although I only had brief exposure to that agency, in contrast to my time before the SSA.

Besides the ability for social security claimants and NJABD participants to appoint nonlawyer representatives upon inquiry, there are no mechanisms in place that are particularly apparent within either the SSA or NJ FamilyCare to help actively meet the demand for such

⁶ Because of the nature of SSA proceedings, there was no "opposing counsel" on the other side of any case; the vocational and medical experts appointed by the SSA to appear in cases are neutral, as are the ALJs.

⁷ Notably, the average nonlawyer representative, who is not in law school, is further limited in that he cannot use Local Civil Rule 101.1(h) to appear in federal court and thus cannot file appeals that way.

⁸ See *The NJ FamilyCare Aged, Blind, Disabled Programs*, STATE OF N.J. DEP'T OF HUM. SERVS., DIVISION OF MED. ASSISTANCE & HEALTH SERVS., <https://www.nj.gov/humanservices/dmahs/clients/medicaid/abd/> (last visited Aug. 31, 2024).

⁹ The reason the social security disability section of the Civil Justice Clinic got renamed to the Economic Justice and Public Benefits Clinic was because the work its students perform is holistic; the Clinic's clients are typically indigent people who suffer from severe disabilities, so it is not uncommon for Clinic students to assist them with administrative programs outside of the SSA.

representation. The SSA, for example, could better meet claimants' needs for representation by simply making it known to the public, on the most heavily traveled pages of its website, that third party representation is even an option. As of the date of this publication, on the SSA's webpage where a claimant must go to begin an application for benefits, there is no mention at all about the possibility of appointing a representative.¹⁰ After clicking the relevant fields and selecting "start application," the next page, which includes detailed written instructions as well as an instructional "how to" video, still does not mention at all the option of appointing a representative, or how to do it. This is deceiving, as the SSA does have a system in place to allow for representation by nonlawyers and other individuals, as detailed *supra*.¹¹ It therefore cannot be said that the SSA encourages people to take advantage of its procedures that allow claimants to appoint representatives.¹² Rather, claimants are encouraged to complete an application themselves, and they only learn about the possibility of appointing a representative if they run a narrow search on the internet or the SSA's website for a "Form 1696"¹³—or by some other means of information, such as word of mouth from a friend or acquaintance who happens to have heard about the Rutgers Law Clinic, for instance.

At the very least, including information about appointing a representative on the application page would help the SSA to encourage nonlawyer representation.¹⁴ However, other public and private sector groups can play a role as well in increasing nonlawyer representation. A critical task is simply to spread the word that services like the Clinic exist; online discussion fora centered around specific geographic areas, such as neighborhood groups on Facebook or other forms of community-based social media, could help. Another, more formal approach for increasing

¹⁰ See *Apply for Soc. Sec'y Benefits*, SOC. SEC'Y ADMIN., www.ssa.gov/apply (last visited Aug. 31, 2024).

¹¹ The setup of the SSA's website makes the possibility of appointing a representative that much more difficult for claimants, some of whom, like the clients serviced by the Clinic, are severely disabled and have extra trouble navigating administrative procedures.

¹² In fact, the SSA and ALJs sometimes discourage representation by over-emphasizing the non-adversarial nature of social security proceedings—for example, by comparing the proceedings to "informal" living room conversations as if SSA hearings do not have real, legal consequences. See Jon C. Dubin, *Why Carr v. Saul Should Signal the End of Common Law Issue Exhaustion in Inquisitorial Proceedings*, 29 GEO. MASON L. REV. 627, 643-44 (2022).

¹³ On a page of the SSA's website discussing the Form 1696, claimants are informed: "If you do not have a representative and you are interested in getting one but do not know how to, your local Social Security office can give you a list of legal referral services and non-profit organizations, (such as legal aid services and local bar associations) that either provide services free of charge or help you find a representative." *Form SSA-1696: Claimant's Appointment of a Representative*, SOC. SEC'Y ADMIN., <https://www.ssa.gov/forms/ssa-1696.html#:~:text=Form%20SSA%2D1696%20%7C%20Claimant's%20Appointment%20of%20a%20Representative&text=Your%20representative%20can%20be%20an,unless%20they%20win%20your%20case> (last visited Aug. 31, 2024). While this is a great start to at least making it publicly known somewhere on the SSA's website that there are organizations like the Clinic to assist with representation, the average claimant looking to submit an application will not be able to find this information unless it also appears on the opening pages of the application process.

¹⁴ Organizations such as the Clinic are limited in the number of claimants they can represent due to finite resources, but any representation at all is more promising for someone's social security case than having no representative. See, e.g., HILARY W. HOYNES ET AL., LEGAL REPRESENTATION IN DISABILITY CLAIMS 43-44 (NAT'L BUREAU OF ECON. RSCH. 2022) (representation at the initial hearing stage leads to increased initial allowance of benefits and improves overall efficiency of the administrative process). Moreover, there are no readily apparent drawbacks to increasing nonlawyer representation in SSA proceedings; if anything, having someone more knowledgeable or more comfortable than the claimant navigate a case should streamline the procedures for everyone.

nonlawyer representation would be for various public and private groups in a certain geographic area that provide such services to the public at little or no cost, like the Clinic, to collaborate with one another and create a master memorandum (or digital flyer) outlining the various services available with pre-approved descriptions of the groups, including their respective qualifications (if any) before one can receive representation, and contact information. The flyer-memo could be circulated to agencies like the SSA, both in print for distribution at the agency's local branches and digitally for quick access online, ideally near the application pages or part of the application itself, simply to spread awareness.¹⁵

In sum, representing clients before the SSA as a nonlawyer has revealed to me that the system the SSA has in place to help claimants appoint a nonlawyer representative can be effective once implemented for law student representatives with specialized training; however, internal procedures and the spread of information about appointing a representative could be improved, and the average nonlawyer representative who lacks resources will likely face additional challenges to successful representation. The goal is for the administrative shortcomings identified in this comment, along with the accompanying suggestions for improvement, to serve as an impetus for shaping the landscape of nonlawyer representation before administrative agencies going forward, for the better.

¹⁵ While only the SSA or an arm thereof can put such information on the SSA's website, the public and private groups themselves that provide nonlawyer representation could ask one or a few of its members to volunteer to distribute the content in person, and to help create the content to begin with.