Congress of the United States
Washington, DC 20515

October 28, 2016

The Honorable Carolyn Colvin
Acting Commissioner of Social Security
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Colvin:

We are writing about a series of recent and proposed changes to policies and procedures governing how the Social Security Administration (SSA) evaluates eligibility for disability benefits. We are concerned the changes will have the effect of limiting access to essential income support, including earned benefits, for individuals who meet the statutory eligibility criteria.

The combined effects of these changes would erect new, unwarranted barriers to benefits for severely disabled Americans. The changes are likely to result in individuals being denied benefits to which they are otherwise eligible. In some cases, the denials will be based solely on the inability of individuals struggling with severe illness or disability to navigate already-complex procedural obstacles, and in other cases, individuals will be denied benefits because SSA does not consider the most relevant medical evidence of their disability. This is not the intent of the Social Security Act and is not consistent with the purpose of Social Security and Supplemental Security Income, which is to provide basic economic support to those who, by reason of severe and long-term injury or illness, are unable to support themselves through work.

With hearing waiting times at an all-time high of 543 days, we appreciate that you and your team are making every effort to reduce the unprecedented backlog of pending disability hearings. It is undisputed that SSA requires an adequate number of Administrative Law Judges and support staff to conduct hearings. We understand that hiring has not been sufficient due to the 10-percent reduction in SSA's operating budget since 2010 (after adjustment for inflation). These new procedural barriers to benefits, however, are not an appropriate response to this problem.

These changes are also inconsistent with SSA's commitment to data-driven decision making. Little or no data has been presented to support the changes being proposed. There is no evidence that they will reduce delays or improve accuracy and fairness. In fact, making the process more formal, legalistic and adversarial – the result of adopting these changes – could increase delays, as claimants and their representatives would be forced to file additional appeals in order to have the evidence appropriately considered.

The specific changes of concern are:

- **Proposed regulation to close the record for submission of evidence ("program uniformity").** This change creates an arbitrary 5-day deadline for the submission of evidence in disability appeals, which is counter to the clear language in the Social Security Act and penalizes claimants who, through no fault of their own, are unable to obtain and submit the evidence before the deadline. It is well known that SSA has difficulty obtaining medical evidence it requests from providers – claimants should not be penalized when they face the same difficulty. Further, experience with this policy in Region I reveals significant inconsistencies in the manner in which the 5-day deadline is implemented there. Finally, no evidence is presented that this policy has resulted in faster processing or more accurate decisions; its adoption is likely to result in further delays, as claimants are forced to pursue additional appeals or file new applications in order to have all relevant evidence considered. Program uniformity is a worthy goal and we recommend that SSA apply the evidence rules that exist in the rest of the country in Region I, rather than arbitrarily barring evidence needed to fully evaluate whether an individual meets the eligibility criteria.

- **Proposed revision to rules regarding evaluation of medical evidence** – This proposed rule makes a number of beneficial changes to expand the list of acceptable medical sources and to clarify and update some of SSA's terminology.

  However, the proposal also contains a radical, unwarranted and untested change: it would eliminate the longstanding recognition that evidence provided by medical providers who have examined and treated the claimant is generally of a higher value than medical opinions issued by those who have never examined the claimant, or have only examined them briefly.

  Existing regulations explain the strong rationale for giving significant weight to opinions from individuals who have examined the claimant, and especially those who provided ongoing medical care to them: "**since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.**" (Code of Federal Regulations, section 404.1527(c) (2))

  The proposed rule would regard evidence from a claimant's own medical providers as on par with one-time Consultative Examinations arranged by SSA, or paper file reviews by SSA consultants. Indeed, the proposal suggests that prior administrative medical findings by SSA consultants – which are essentially second-hand forms of evidence, based on whatever medical evidence is available in a claimant's application for benefits, even if incomplete – are equivalent in probative value to actual medical evidence provided by someone with an established, treating relationship with the claimant. A treating source is

far more likely to provide an accurate diagnosis, prognosis, and evaluation of the effect of the individual's impairment on their ability to function in the workplace than a generalist performing a brief exam, or a consultant reviewing and evaluating the often-incomplete medical file at SSA.

Furthermore, adoption of the proposed rule would result in less transparency and public confidence in SSA's decision making, because it eliminates a number of existing requirements for adjudicators to explain why they accepted or rejected conflicting evidence. Under the proposal, evidence from a claimant's own doctors could be summarily rejected, without explanation or justification, if there is other evidence in the file that the adjudicator is able to use. Without requirements for articulation, the public can have no confidence that all evidence will be fairly considered. The proposed rule gives adjudicators too much individual discretion to dismiss key evidence without providing a rationale, and will lead to increasing inconsistency in how claimants are evaluated by different decision makers.

It is well-documented that failure to fully comply with SSA's existing, sensible rules that require adjudicators to explain and justify how they weigh evidence, especially evidence from the applicant's own health care providers, is a common source of remands from the Appeals Council and the federal courts. However, the solution is not to abandon a long-established, clearly-structured, and transparent method of weighing multiple pieces of evidence. Instead, SSA should withdraw this portion of the proposed rule and focus on increased training and compliance with its existing policy -- adding clarifications where necessary but not abandoning the policy itself.

- **Social Security Ruling 11-1p** – This ruling changed a policy which had been in place since 1999, which permitted claimants to continue pursuing an appeal within SSA even if they also chose to file a new application for benefits. Appellants often do this in hopes of receiving at least some income to survive on while they wait for appeals to be heard. The ruling eliminated this option. The real-world effect of this was to force claimants to make the difficult choice between pursuing an appeal that could take several years but could eventually provide back benefits and retroactive medical coverage, or forgoing these potential benefits by filing a new application, with only the prospect of future benefits. We note that claimants whose appeals are in Federal court are not barred from simultaneously filing a new application. We urge the restoration of prior policy, in recognition of the lengthy delays at both the hearing level (543 days) and the Appeals Council (362 days), and the often desperate economic situation of a severely-disabled individual who has been unable to work for so long.

We expect that SSA will carefully consider all comments and concerns, without arbitrary deadlines due to the upcoming change in Administration. As you know, SSA disability programs support the most vulnerable. Great care, deliberation and substantial evidence should guide any changes that could impact full and fair adjudication.

We applauded other recent steps SSA has taken to improve accuracy, consistency and policy compliance in the disability programs, but these proposed regulations go too far. They are inconsistent with both the fundamental purpose of the programs – to provide income to those whose impairments render them unable to work – and the real world in which claimants live, with all the attendant challenges of obtaining evidence and navigating the complex application and appeals process.

Sincerely,

Ron Wyden
Ranking Member
Committee on Finance
U.S. Senate

Sander M. Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives

Sherrod Brown
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