The Social Security Administration's Disability Service Improvement Process

by Commissioner Jo Anne B. Barnhart

Reprinted here in its entirety is Commissioner Jo Anne B. Barnhart's statement of June 15, 2006, to the Subcommittee on Social Security of the House Committee on Ways and Means. In her statement, Commissioner Barnhart outlines the improved disability determination process and how the changes to the process were decided. The key elements are collectively referred to as the Disability Service Improvement (DSI) and represent the most significant changes in the Social Security Administration's 50-year history of determining disability for workers seeking Social Security Disability Insurance benefits. Commissioner Barnhart's statement underscores that while the need for change in the disability determination process was clear, both she and SSA staff listened carefully to all points of view in the decisionmaking process. The end product of this outreach effort and deliberative process is the final rule that was published on March 31, 2006.

The new procedures outlined in the final rule will take advantage of the new electronic disability claims system, or eDib, and will shorten times to make disability decisions and will allow benefits to be paid sooner to people who are clearly disabled. Key elements include a new Medical and Vocational Expert System to improve the quality and availability of such expertise at all levels of adjudication, review of state agency determinations by a Federal Reviewing Official to ensure more accurate and consistent decisionmaking earlier in the process, and a newly created Decision Review Board to identify and correct decisional errors and to identify quality issues at all levels. Two improvements underlying the new process at all levels include better documentation of the record and more effective quality feedback loops for continuous improvement.

Read Commissioner Barnhart's statement for a further explanation of DSI, how the changes were decided, and her plans for implementation.

Mr. Chairman, Mr. Levin, and Members of the Subcommittee,

I am always delighted to appear before you, but today I am especially pleased to be here. Today, I am here to report that, after three years of incredible effort and cooperation, our new disability determination process is a reality. For the first time in 50 years, we are making significant changes to the Social Security Administration's (SSA) disability determination process—changes that substantially increase our ability to make accurate disability decisions in a timely way. And that means better service to the American public.

First significant change to the disability determination process in 50 years

I will outline the elements in the new process in a few moments, but first I want to take this opportunity to talk about how we got to this point. It has been a long journey, and the members of this subcommittee have shared with me the journey toward this achievement. And so have many others within and outside SSA. And I want to thank you and everyone who participated from the bottom of my heart.

When I became Commissioner in 2001, I said that I did not take this job to manage the status quo, and nowhere was the need for change more clear than in the disability process. I'm sure you know that there were people who told us that it would be impossible to make major, comprehensive changes to the disability determination process. But we have, and we have succeeded because groups involved at every step in the disability process came together in a spirit of cooperation and professionalism. We succeeded because of that spirit of cooperation, openness, and constructive dialogue that I have seen in the conversations we've had with people involved at every stage of the process.

As you know, when I announced my new approach, I began a massive outreach effort to obtain and give thoughtful consideration to all comments on the current disability system and on our proposed improvements. I have acted upon my commitment to listen to you, to the interested parties and groups in both the government and private sector, and to the claimants and beneficiaries who rely on us to provide the best possible service.

I personally participated in more than 100 meetings with more than 60 groups involved in the disability process – inside and outside of SSA. My staff conducted even more meetings and we received more than 1000 comments and recommendations over the Internet alone. I was very impressed with the spirit of cooperation and professionalism that these groups brought to our discussion.

When we published the proposed rule, I did not expect agreement on every element of the approach outlined in the Notice of Proposed Rule Making (NPRM). However, I hoped for—and got—a continuation of the same spirit that we saw in the initial outreach period.

During the comment period, SSA received almost 900 comments. At the hearing last September on the NPRM, members of this Subcommittee urged me to consider carefully the issues that were being raised in the comments. I want you to know that I personally read many of these comments in full and worked with my senior staff to review and discuss all of them.

We listened and made changes in response. The disability determination process that we will begin implementing in our Boston Region on August 1 is both different and better than the original blueprint I first discussed with you on July 24, 2003, and the process outlined in the Notice of Proposed Rulemaking we published in July 2005.

In drafting the final rule, we were aware that many commenters perceived our proposed rule as favoring administrative efficiency over fairness—especially in regard to timeframes for submitting evidence before a hearing. When I testified before this Subcommittee last fall, members of the Subcommittee articulated these same concerns. Let me assure you that was <u>not</u> our intent. The new approach spelled out in the final rule contains many changes which underscore my commitment to an open, inclusive dialogue in the true meaning of the word dialogue— which includes listening.

Open and constructive dialogue at every phase

We addressed the concerns about giving claimants sufficient time to submit evidence in three ways. First, we will give claimants at least 75 days notice before a hearing instead of the 45 days proposed in the NPRM. This will allow claimants and their representatives enough time to gather all necessary evidence and prepare for the hearing. Second, the final rule allows claimants to submit evidence up to 5 business days before their hearing

instead of 20. This gives the claimant more time to submit evidence and will ensure that all parties to the hearing have enough time before the hearing to review the evidence and prepare for the hearing. Third, we expanded the range of circumstances in which an administrative law judge (ALJ) will accept evidence that does not meet the 5-day deadline.

Final Rule

The final rule was published in the *Federal Register* on March 31. It explains the new procedures for adjudicating initial claims for disability insurance and for Supplemental Security Income based on disability or blindness. The preamble to the final rule explains in detail the changes from the NPRM that were made as a result of the comments the Agency received. We created a dedicated website, www.socialsecurity.gov/disability-new-approach, to provide you with information about the new regulation and background related to its development.

The new disability determination process takes full advantage of Social Security's new electronic disability claims system, or eDib. Using eDib technology, the Disability Service Improvement (DSI) changes will shorten decision times and pay benefits to people who are clearly disabled much earlier. eDib also allows us to access the electronic folder from any location making possible many of the changes in the new process.

Changes to the NPRM

As I mentioned at the beginning of my statement, in drafting the final rule, we were aware that, although there was broad agreement on the need for change, numerous groups perceived our proposed rule as favoring administrative efficiency over fairness.

We made a number of changes in the final rule in addition to the changes in the timeframes for submitting evidence that I discussed a moment ago.

We added language to the final rule to make it clear that a claimant, unable to make a timely request within 60 days of receiving his or her initial notice, can request additional time to request a review both before and after the 60-day period has ended. The claimant will also be permitted to submit new evidence after requesting review up until the date of the Federal Reviewing official, or FedRO decision (I will discuss this provision in more detail later).

We heard many concerns with the proposal that the Decision Review Board, or DRB, would consider only statements that it requested from claimants. In response, in the final rule, we allow claimants to submit statements to the DRB whenever the DRB notifies a claimant that it will review his or her claim.

Without question, elimination of the Appeals Council and its effect on the Federal courts was the area in which the most concern has been raised. At present, all social security disability cases appealed to the Federal courts must first be reviewed by the Appeals Council. Despite this final administrative review, nearly 60% of all appealed cases are remanded to the Agency either "voluntarily" through requests made by our General Counsel or as a result of findings made by the courts. Accordingly, in the NPRM we proposed gradually to phase out the Appeals Council and replace it with a new DRB. While claimants would no longer have a right to request review of an ALJ decision, the DRB would review an equal number of error-prone allowances and denials.

Throughout the comment period, concerns were expressed about this approach by organizations representing disability claimants who expressed fears that clearly erroneous denial decisions might escape review. The Judicial Conference and others also expressed concern that the Federal courts might be inundated with meritorious claims that would otherwise have been intercepted and resolved by the Appeals Council. In both instances, these concerns centered on the question of whether the Agency could develop an effective method for selecting the cases to be reviewed by the DRB.

Reduced waiting time for those entitled to benefits

In response to these concerns, we have decided that the DRB will initially review all of the administrative law judge decisions—allowances and denials—issued in the Boston region. This 100 percent review will allow us carefully to design, test, and validate a predictive model for selecting a subset of all ALJ decisions for DRB review that include those most likely to be remanded by the U.S. District Courts. During this same period, we will analyze the effects of the new approach on the workload of the Federal courts within the region.

We also heard many concerns about the changes we proposed regarding our reopening rules. Many argued that our existing reopening rules already worked well for claims decided at the earlier stages of the process. In

response, we decided that our existing reopening rules would continue to operate for all claims adjudicated prior to the hearing level. We retained other changes to the reopening rules to allow for the reopening of claims decided at the hearing level or beyond while at the same time ensuring that we could efficiently close the record, with good cause exceptions, after we have issued a final decision.

Overall, our expectation is that the disability service changes will result in substantial improvements that will enable claimants to receive more accurate, consistent, timely, and understandable decisions. We also believe that this rule ensures an adjudicatory process that is consistent with due process, will give claimants a meaningful opportunity to be heard, and make accurate allowances as early in the process as possible.

Changes in SSA's Structure

To improve the management of our initiative as we move forward, I made two major organizational changes at SSA. I created a new Deputy Commissioner-level office named the Office of Disability Adjudication and Review to manage the agency's disability adjudication process. The Office of Disability Adjudication and Review, or ODAR, will manage the new FedRO level, the hearings and appeal functions formerly managed by the Office of Hearings and Appeals, and the new Decision Review Board. I believe it is important to have a single Deputy Commissioner that I can rely on to manage effectively every level of our disability adjudication appeals process, so that I can be sure that the entire adjudicatory process is functioning efficiently and fairly for every single claimant.

New approach to be phased in

I also established a new Office of Quality Performance to manage the Agency's newly developed and still evolving integrated quality system which I believe will improve our disability determination process, as well as other program areas such as the Social Security retirement program and the SSI age-based program. The new Office of Quality Performance will manage a new quality system that includes both in-line and end-of-line quality review throughout the new DSI process. The Office of Quality Performance will be able quickly to identify problem areas, implement corrective actions, and identify related training as we implement the new DSI process.

Features of the New System

So how does the new process work? In summary:

- The State Disability Determination Services (DDS) will continue to make the initial determination.
- Individuals who are clearly disabled will have a process through which favorable determinations can be made within 20 calendar days after the date the DDS receives the claim.
- A Medical and Vocational Expert System (MVES) will enhance the quality and availability of the medical and vocational expertise that our adjudicators at all levels need to make timely and accurate decisions.
- A new position at the Federal level—the Federal Reviewing Official, or FedRO—will be established to review state agency determinations upon the request of the claimant. We intend to have well-trained attorneys serve as FedROs and we expect that this level of review will help ensure more accurate and consistent decision making earlier in the process.
- The right of claimants to request and be provided a de novo hearing conducted by an administrative law judge is preserved.
- The record will be closed after the administrative law judge issues a decision, with provisions for good cause exceptions.
- A new body, the Decision Review Board (DRB), will be created to identify and correct decisional errors and to identify issues that may impede consistent adjudication at all levels of the process.
- And the Appeals Council will be gradually phased out as the new process is implemented throughout the nation.

Two key improvements are embedded in the process. First are improvements in documenting the record at each step, so that all relevant information is available to adjudicators, and the claimant fully understands the basis for whatever decision is made. Second is a greatly strengthened in-line and end-of-line quality review process. In addition, quality feedback loops at every level will foster continuous improvement.

Implementation

The DSI process will be rolled out in a careful and measured manner. This gradual implementation will allow us to monitor the effects that the changes are having in each region, on our entire disability process, and the Federal courts. The lessons that we learn in the early stages of implementation will help us as we move into the later stages of the roll-out.

Just as we did with the implementation of our electronic system, implementation will be phased in and if we find that additional improvements are needed during the roll-out, we can and will make them. We will continue to listen to those with concerns, and we will make changes when necessary.

Moreover as we roll out the DSI process we intend to continue and expand our efforts to make sure that all adjudicators make their determinations and decisions based on a record that is as complete as possible. To do so, we plan to review and improve our informational services to claimants and to medical providers so that they will better understand what information adjudicators need to make determinations or decisions.

We also are developing requirements for training physicians and psychologists who perform our consultative examinations to make certain that they understand our determination process and the information adjudicators need to make accurate decisions. As part of this effort to improve consultative examinations, we are instituting a quality review to ensure that claimants are getting a good evaluation of their conditions by the right set of eyes and to ensure these examinations are yielding the information we need to make decisions. In addition, we are developing templates that adjudicators will use when they request examinations to ensure that the appropriate information is requested.

Decisional templates are also in the works for adjudicators at the DDS and FedRO levels that will assist them in writing decisions, and we have already started using a decisional template at the administrative law judge level. The use of these templates will help ensure that claims are properly developed, legally sufficient, and consistent with our policies.

The templates are being or have been created and tested with considerable input from adjudicators in the field—the very people who will use them in the new process. They are a critical factor in ensuring accuracy and consistency, and in enabling the quality feedback loops.

In addition, we are working with medical sources to encourage the submission of evidence electronically whenever possible in order to expedite the decisional process. Special arrangements are in place to obtain both medical and non-medical records from large governmental agencies such as the Department of Veterans Affairs, the Military Personnel Records Center, and State Division of Vital Statistics. As a result, Social Security is already the largest repository of electronic medical records in the world. And, we have stringent policies and procedures in place to properly safeguard personally identifiable and medical information from loss, theft, or inadvertent disclosure.

Encouraging medical sources to submit evidence electronically

We will begin implementation in the Boston Region for claims filed on or after August 1, 2006. Boston is one of our smallest regions and is comprised of the six States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. After full implementation in these states, we expect to wait an entire year—to monitor the changes and collect management information—before we consider rolling out in a second region.

By taking this careful and measured approach, we will be able to address any issues that may arise and ensure that implementation in future regions will progress efficiently.

Under our implementation plan, DSI will only apply to claims that are filed in a region where the DSI process has been implemented. If a claim is filed in a region where we have not yet implemented the new process, we will use current procedures to adjudicate the claim.

If a claimant moves from one State—where the new process is in place—to another State—that does not have the new process—the adjudicators will apply the regulations that were initially applicable to the claim. In other words, once a claim is under one system, it will stay in that system. This also applies to the pending cases in a region when roll-out begins. Those cases that are already in the system will be worked under the "old" rules and new cases will be worked under the "new" rules.

For example, the elimination of an Appeals Council review will only apply in regions where we have rolled

out the new DSI process and to disability claims that have been processed from the start under this rule.

Of course, we will continue to monitor the effects on the disability determination process and the Federal courts as we implement DSI in other regions of the country. Obviously, if we find that there are issues, we will make changes as necessary.

Rollout Begins August 1

As I said, we are rolling out the process on August 1st, and you have my assurance that we are doing all that we can to make sure that we implement in an orderly and timely manner. In typical fashion, the hardworking men and women of SSA and the state DDSs have pulled together and are getting the things done that must be done to move forward.

SSA and state DDS staffs working together to get the job done

So far, we have developed major new computer systems to support the DSI initiative. We have performed all of the personnel and hiring work necessary to make sure that we have the new employees in their new positions, properly trained, in time to perform their new DSI duties when implementation begins. We are working to ensure that effective training is prepared and presented to every employee who will be involved with the new disability determination process. Although we do not have the same kind of personnel or hiring issues at the hearing level as we do for other levels, we do have systems needs unique to the hearing level, and we are currently working to ensure that the necessary computer systems are in place by the time the first DSI claim reaches the hearing level.

Getting it done right

Conclusion

As you know, shortly after I became Commissioner, I met with President Bush to discuss SSA's disability programs. He asked me three questions:

- Why does it take so long to make a disability decision?
- Why can't people who are obviously disabled get a decision immediately?
- Why would anyone risk going back to work after going through such a long process to receive benefits?

I am proud to say that our new disability process addresses all of these concerns.

As I look back over the long road to the changes we will begin implementing in just a few weeks—and reflect on the spirit of cooperation, professionalism and dedication to serving the public that has been demonstrated by the men and women of SSA and the DDSs, advocacy groups, and Congress—I am convinced that we can make this happen. I am also convinced that the American public will benefit greatly.

As we roll out DSI, we plan to continue the dialogue that has served the process so well. Because this is not just about getting it done; it's about getting it done right.

In closing, I want to express again my heartfelt thanks to everyone who has helped us on our journey toward an effective DSI. As I said at the beginning of my testimony today, this subcommittee has traveled with us throughout the journey. I want to thank you again publicly for your advice, insight and support that have meant a great deal to the agency and to me personally. And I know that we can count on your continued support and advice as we make DSI a reality.