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United States Senate

WASHINGTON, DC 20510-2102

December 20, 2007

The Honorable Michael J. Astrue
Commissioner
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

Dear Commissioner Astrue:

On October 29, 2007, the Social Security Administration (SSA) published a Notice of Proposed Rulemaking (NPRM) on Amendments to the Administrative Law Judge (ALJ), Appeals Council, and Decision Review Board Appeals Levels. This proposed rule was noticed as part of an ongoing effort of the Social Security Administration to improve the efficiency for processing claims. However, I am concerned that aspects of this proposed rule will be detrimental to individuals who depend on Social Security and SSI disability benefits.

The NPRM would create a complex legal process which assumes that claimants have legal representation at all stages of the process. The Social Security hearing process that we have today was designed to be informal. It encourages individuals to supply information, often regarding the most private aspects of their lives. The informality of the process has made it easier for a layperson to understand the proceedings.

The proposed regulations would close the record to relevant evidence prior to the ALJ hearing and require claimants to submit all evidence five business days before the hearing with only limited exceptions to the requirement. Disabled claimants often have trouble gathering the necessary medical records. Requiring that the record be closed before the claimant even comes face-to-face with an ALJ denies the applicant the opportunity to present evidence to the adjudicator of his or her claim. Furthermore, it is inconsistent with the Social Security Act's requirements that a claimant has a right to a hearing with a decision based on "evidence adduced at the hearing." Unfortunately, the problems with the proposed regulations do not end there.

While the proposed regulation appropriately restores the claimant's right to require an administrative review of an unfavorable decision, the right to review a decision is curtailed by new and significant limits on review by the Review Board and by the federal courts. This could result in a claimant not being able to offer evidence of a worsening medical decision since the first ALJ decision.

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Both closing the record and limiting claimants right to review would force claimants to file new claims and further clog an overloaded system. A claimant would be required to file a new application for any change in disability which occurs after the date of the original ALJ decision. These two changes - while not only unacceptable - would result in denying benefits to the disabled and only make the backlog problem worse. The ability for a claimant to have a full and fair hearing would be undermined by the proposed rules.

Recently, Congress passed the Consolidated Appropriations Act, 2008 which includes new resources that should help the Social Security Administration address the backlogs in a manner that would be better than restricting the hearing process. Thank you in advance for your consideration of this important issue.

Sincerely,



John F. Kerry