

United States Senate

WASHINGTON, DC 20510-1502

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
HEALTH, EDUCATION,
LABOR, AND PENSIONS
SMALL BUSINESS

December 13, 2007

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

Re: Proposed regulation in 72 Fed. Reg. 61218 (Oct 29, 2007)

Dear Mr. Commissioner:

I appreciate the commitments you have made to improve claims processing and reduce the backlog of disability adjudication at the Social Security Administration. As you know, this is very important for me as well, and I have made it a priority in the FY 2008 Labor, Health and Human Services, Education, and Related Agencies Appropriations bill.

Unfortunately, I am concerned with the way certain aspects of new proposed rule designed to speed processing times will impact the review of claims. In this kind of undertaking, there is always a danger in increasing the speed of reviews at the expense of due process, or increasing denials of otherwise qualified applicants who have missed procedural hurdles, which can be especially difficult for many of the neediest applicants who have no legal counsel.

I would like to state that I am pleased that this new rule rejects the proposal in the earlier Disability Service Improvement (DSI) plan to replace the Appeals Council with a Decision Review Board (RB). It is critical that claimants retain the right to request an administrative review of an unfavorable Administrative Law Judge (ALJ) decision. However, I am concerned about the new standard for evidentiary review which will not allow the Decision Review Board (RB) to take into account a worsening of a condition after the final ALJ denial, and it will make it more difficult to reopen a case that has moved to this level. In addition to this being unfairly punitive to applicants, this seems to run counter to the goal of streamlining the process, since this could require the filing of a whole new claim for someone who may be currently entitled to receive benefits.

Perhaps most vexingly, this Notice of Proposed Rule Making (NPRM) would limit federal courts from being able to affirm, modify, or reverse ALJ decisions, as they are currently allowed to do under statute, as well as to remand a case requiring the submission of new and material evidence with good cause. Furthermore, it appears that under the NPRM, people who receive a remand proceeding will then only be found eligible for a finite period. This could have disastrous consequences for individuals

reliant on other supports such as Medicare, Medicaid, and Ticket to Work incentives. Clearly, we don't want to put some group of applicants into a position of having to reapply simply because they received an inappropriate determination – as reapplying means if they are approved, their benefits would start from a later date than as if they got a favorable determination.

I am also concerned about new limits on evidence submission. While I completely agree that finding ways to get as much evidence as possible submitted as far in advance as practicable prior to the hearing, the statute does allow for evidence to be submitted at the time of the hearing. (42 U.S.C. Sec. 405(b)(1)) The proposed regulation states that evidence may be submitted later than five days from the hearing if the SSA misled the claimant, the claimant had a limitation preventing them from getting the evidence in, or for other unexpected or unavoidable circumstances. However, those circumstances and limitations aren't clearly defined. After the hearing but before the decision, the criteria are even more stringent – the claimant must show the above as well as a reasonable possibility that this additional evidence would affect the outcome. Again, the standard for evidence submission is even more stringent at the Review Board level.

Finally, I am concerned that claimants will now only have thirty days from the seventy-five day notice prior to the hearing being scheduled to request a different date, with greater discretion going to the ALJ for exceptions to that rule. These new rules on deadlines, evidence submission, and reconsideration could all have the effect of leading to greater discrepancy between similarly situated claimants.

Again, I share your concern with the speed of disability claims processing and hope that we can continue to work together to expedite the backlog in a way that is fair for claimants and carries out the letter and intention of the statute.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Harkin".

Tom Harkin
United States Senator