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Congress of the United States
House of Representatives
Washington, DC 20515-5400

June 12, 2015

Hon. Carolyn W. Colvin
Acting Commissioner
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235-6401

Dear Commissioner Colvin:

In August 2013, 74 individuals in Puerto Rico, including four doctors and a non-attorney claimant representative, were indicted and arrested for their alleged involvement in a scheme to defraud the federal Social Security Disability Insurance (SSDI) program, which provides monthly benefits to workers under the retirement age who meet the statutory test of disability and their eligible dependents. As of December 2014, there were nearly nine million individuals receiving SSDI benefits in the United States, including about 180,000 in Puerto Rico.

On May 8th, at my request, senior officials at the Social Security Administration (SSA) provided a detailed briefing to my office on the specific steps that SSA has taken in response to the August 2013 indictments. According to this briefing, once those indictments had been handed down, SSA chose to review the cases of close to 7,000 SSDI beneficiaries in Puerto Rico who had been approved for benefits between August 2008 and April 2013 and whose files contained medical evidence from one or more of the four indicted doctors or evidence that the beneficiary had interacted with the indicted non-attorney claimant representative. The purpose of SSA's review was to determine if the beneficiary still had sufficient evidence in his or her original case file to meet the statutory test of disability once the "tainted" evidence was removed from the file. Following this review, SSA continued benefits for over 5,000 beneficiaries and mailed a letter to the other approximately 2,000 beneficiaries, advising them that "we are suspending your disability benefits." SSA has confirmed for me that suspension letters were sent in both Spanish and English.

The suspension letter names the four indicted doctors and the one indicted non-attorney claimant representative, and explains to the recipient that "[o]ne or more of these sources provided evidence in your case that we used to find you disabled." The letter further states that "we are suspending your benefits while we redetermine whether you were entitled to benefits on [a date between August 2008 and April 2013], the date we initially allowed your claim." Finally, the letter states: "If you believe this information is incorrect, you have 10 days to respond. If we do not hear from you in that time, we will make our final decision." The letter tells beneficiaries that, if they "have information to show this decision is incorrect," they should mail that information to an address in Newark, New Jersey. The letter provides a Newark phone number

for beneficiaries to call if “more time is needed to submit this material.” I am advised that SSA received over 1,700 calls from affected beneficiaries in Puerto Rico.

Of the 2,000 or so beneficiaries who received a suspension letter, it is startling that only about 130 (less than 7 percent) provided information that caused SSA to reverse the suspension and to continue benefits. The remaining approximately 1,880 beneficiaries subsequently received a second letter from SSA, this one advising them that their benefits were being “stopped”—that is, terminated. This termination letter informed beneficiaries that they had 60 days in which to file an appeal with SSA, known as a “Request for Reconsideration.” I am advised that about 96 percent of the roughly 1,880 beneficiaries filed an appeal. Of that group, 345 beneficiaries were successful in their appeal and had their benefits reinstated by SSA, and about 1,435 beneficiaries had the SSA decision terminating their benefits affirmed on appeal. (SSA continues to process a number of appeals.) I am further advised that approximately 1,200 beneficiaries whose benefits were terminated and who were unsuccessful at the appeal level have requested a hearing before an Administrative Law Judge (ALJ), and that those proceedings will take place in the coming months. In the event an ALJ affirms SSA’s decision to terminate benefits in a particular case, the (former) beneficiary may then appeal to the SSA Appeals Council and, if that is not successful, to U.S. federal court.

I am confident that SSA and I have the same goal. We both want to ensure that beneficiaries in Puerto Rico who are not disabled do not receive SSDI benefits, and we want to make certain that beneficiaries who are genuinely disabled continue to receive benefits as they are entitled to under federal law. To achieve this mutual objective, it is incumbent upon SSA to strike a careful balance, employing a procedure that identifies non-disabled individuals but does not inadvertently suspend or terminate benefits for disabled individuals. This is especially important because, for many SSDI beneficiaries, their monthly SSDI payment is their sole or primary source of income. Terminating those benefits can cause extraordinary harm, and can result in the loss of other federal benefits such as Medicare coverage. My office has been contacted by scores of SSDI beneficiaries who believe they have had their benefits terminated unjustly, and the pain in their voices is heartbreaking. I know SSA is attuned to the human costs associated with terminating an individual’s SSDI benefits, and does not take such action lightly.

Nevertheless, in light of all the information furnished to me by SSA, I do not believe the process employed by SSA in response to the August 2013 indictments strikes the necessary and proper balance. I am particularly dismayed by the contents of the suspension letter that was sent to about 2,000 beneficiaries, which resulted in the immediate cessation of benefits. The purpose of this letter was to afford due process to beneficiaries by providing them with a meaningful opportunity to submit additional non-tainted evidence to support their original claim of disability. Respectfully, the letter fails to accomplish this goal. The letter is vague and ambiguous. It does not provide any specific guidance or direction to recipients. The letter does not advise beneficiaries that it is necessary for them to obtain and submit additional evidence to support their claim of disability. Confused beneficiaries could call the Newark phone number listed on the letter, as many seemed to do, and hopefully an SSA employee in Newark provided them with more precise guidance. (However, it is worth noting that the suspension letter instructs beneficiaries to call the Newark phone number in the event they need more time to submit relevant material, not in order to obtain more general assistance regarding their case.)

But there is no way of knowing whether that in fact happened. Perhaps it did in some cases, and not in others. Even if it did happen, it is not an adequate substitute for a sound letter that provides clear direction.

Moreover, giving beneficiaries 10 days to respond to the letter is not sufficient, and the fact that SSA may have provided extensions in certain cases (as I am advised the agency did) does not cure this underlying defect. Even assuming a beneficiary was able to glean from the letter or from a call to the Newark office that it was incumbent upon the beneficiary to obtain additional non-tainted medical evidence to support his or her claim of disability, it is not realistic for a beneficiary (particularly one who has a physical or mental impairment) to schedule an appointment with one or more doctors, attend those appointments, and obtain written statements from those doctors attesting to the beneficiary's disability—all within 10 days. It bears reiteration that the beneficiary must take all these steps without the income from a monthly SSDI check, since the suspension letter froze those payments.

The fact that this critically-important suspension letter was deficient in key respects may help explain why only 7 percent of the 2,000 or so beneficiaries responded to the letter by providing additional evidence that was sufficient for SSA to reverse its suspension decision and continue benefits. I think it is highly likely that some or many of the 1,880 individuals who had their benefits suspended and then terminated are, in fact, disabled. That is profoundly concerning.

In light of the foregoing, I urge SSA to start fresh and to issue a new letter to these 1,880 individuals that supersedes the old suspension letter. The letter could begin by advising beneficiaries that their termination letter has been rescinded. The letter could then unambiguously state that the beneficiary must obtain additional non-tainted medical evidence in order to support his or claim of disability. The letter could provide a reasonable amount of time (i.e., more than 10 days) for the beneficiary to obtain such evidence. Finally, during this suspension period, the SSA could exercise its discretion to continue benefits, as I understand SSA recently did in a similar case in West Virginia and Kentucky. If the beneficiary does not provide sufficient evidence, then a new termination letter could be issued and benefits could be terminated, with the beneficiary entitled to appeal that decision to an ALJ, the SSA Appeals Council and a federal court. This procedure would require additional time, to be sure, but I believe it is the appropriate and humane course of action. I hope you will consider it.

In January 2015, SSA announced a second set of indictments in Puerto Rico, this time of 40 individuals, including a psychiatrist. It is my hope and expectation that SSA will ensure that any review of records that the agency undertakes in response to these indictments is handled with extraordinary care. SSA should develop an improved process that gives greater protection to truly disabled individuals who have been ensnared in a situation not of their own making. Specifically, in keeping with the proposal I outlined above, I urge SSA to re-write the suspension letter it sends to beneficiaries so that the letter provides clear instructions regarding the need for beneficiaries to provide additional non-tainted evidence to support their claim of disability in order to prevent a termination of their benefits. If SSA finds that its current regulations do not provide it with sufficient flexibility to respond to these particular circumstances, I urge SSA to revise those regulations.

I thank you in advance for your attention to this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pierluisi". The signature is fluid and cursive, with a large initial "P".

Pedro R. Pierluisi
Member of Congress

cc: Beatrice Disman, Senior Advisor to the Acting Commissioner, U.S. Social Security Administration