

January 31, 2020

Andrew Saul
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21207

Submitted via www.regulations.gov

Re: Notice of Proposed Rulemaking on Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 36588 (November 18, 2019), Docket No. SSA-2018-0026

Dear Commissioner Saul:

As United States Representatives for the state of Pennsylvania, we write to express our deep concern over the Social Security Administration's (SSA) proposed rule that will increase the frequency of continuing disability reviews (CDRs) used to determine qualification of disability benefits. Hundreds of thousands of individuals subject to CDRs are at risk of losing their benefits as a result of this proposed rule change and therefore, we do not think the rule should be adopted based on the following:

I. CDRs place undue burdens on disability beneficiaries

Over 3 million people in Pennsylvania receive either Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) annually.¹ As we have heard from many of our constituents, the current process of disability reviews to obtain social security benefits is already daunting. Take for example the story of Sonya Schlegel—a resident of Westmoreland City, PA who receives SSI benefits monthly due to a brain injury and other debilitating conditions. She was awarded benefits only after using the assistance of an attorney to fight her claims for two years and has described the challenging disability reviews process as “frustrating, demeaning, and nerve-racking.”² Due to her inability to work, SSI is her only source of monthly income. We are very concerned that this proposed rulemaking will cause significant benefit interruptions to otherwise eligible beneficiaries like Ms. Schlegel, due to their inability to comply with this complicated bureaucratic process.

While a requirement to complete paperwork and submit documentation at the risk of losing monetary benefits and health care would be stressful for anyone, it is likely more difficult, stressful, and time-

¹ <https://www.census.gov/mycd/?st=42&cd=05>

² Kate Giammarise, “Proposed Social Security Disability Changes Could Cut Off Disabled,” *Pittsburgh Post-Gazette*. January 13, 2020. <https://www.post-gazette.com/news/social-services/2020/01/13/Proposed-Social-Security-disability-changes-recipients-pittsburgh/stories/202001070127>. Accessed January 24, 2020.

consuming for disability beneficiaries, who as a group are older,³ poorer,⁴ and sicker than the general population. SSA subjects beneficiaries to CDRs even when the administration is aware that particular beneficiaries face obstacles that likely preclude them from participating in the reviews. Examples include beneficiaries who have an intellectual disability preventing the person from understanding the review paperwork, or difficulty reading or writing. If a CDR recipient is unable to complete the process, they will become part of an increasing number and percentage of CDR recipients whose disability benefits are terminated for “failure to cooperate” with the CDR process.⁵

Additionally, CDRs are costly. Beneficiaries often must pay to obtain existing medical records and/or make additional medical appointments so their providers can complete paperwork or perform additional testing. Those beneficiaries who are lucky enough to find help may also need to pay legal representatives to assist them in completing CDR paperwork, attending Disability Hearing Officer and Administrative Law Judge hearings, and appealing to the Appeals Council and federal courts. Data from Pennsylvania’s Bureau of Disability Determination suggests that even claimants who are able to find counsel to help them with initial applications are unable to find help with CDRs (less than 5% are represented), meaning they must face this complicated process on their own. Although SSA does not mandate these costs, the high likelihood of benefit termination without makes their “optional” nature a distinction without a difference. SSA should not force beneficiaries to experience these burdens more frequently.

II. This New Rule Will Increase the Hearing Backlog

SSA has a long-standing hearing backlog, which effectively denies benefits to disabled individuals entitled to receive them. As Pennsylvania representatives, we are acutely aware of these backlogs; less than two years ago, in March 2018, the Philadelphia hearing offices had some of the longest waits for hearings in the country. People literally died waiting for a hearing. Recent progress in reducing the backlog will be wiped out, requiring 2.6 million new CDRs over the next decade. SSA will cause hundreds of thousands of current beneficiaries to lose their benefits, and many of those will appeal those terminations. Those appeals will then be added to the current pending hearing backlog. This NPRM does not provide an estimate of how many increased appeals it anticipates will result from this policy. The proposed SSA rule is certain to increase the backlog again.

III. The Proposal is Arbitrary and Capricious and Lacks Evidentiary Basis

This rule arbitrarily and capriciously targets children and older workers:

The SSA has not provided any explanation or evidentiary support for the proposed rule, for why children nearing ages six and twelve, should be reclassified and subjected to more frequent reviews as part of the “Medical Improvement Likely” (MIL) category.⁶ In fact the only justification given is NPRM’s reliance

³ More than 75% of SSDI beneficiaries are age 50 or older, over 35% are age 60 or older, and nearly 6% are age 65. https://www.ssa.gov/OACT/ProgData/benefits/da_age201612.html

⁴ 71% of Title II disability beneficiaries have household income below 300% of the poverty level; 20% were in poverty. Among SSI recipients, the poverty rate was 34% for children and 43% for adults aged 18-64. <https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html>

⁵ According to SSA’s annual CDR reports to Congress, in 2013 there were 2,256 failure to cooperate (FTC) terminations, reflecting less than 2% of all terminations after CDRs. By 2016, these had increased to 9,956 FTC terminations, 5.1% of all CDR terminations.

⁶ See 84 F.R. 635593

on a study showing that terminating SSI benefits of children with disabilities increases parental earnings, thus deterring family members from apply for other Social Security benefits.⁷

Subjecting all children with severe disabilities to more frequent reviews *en masse*, merely based on their age, is the definition of arbitrary and capricious. It threatens the stability of a very vulnerable population – that is, low-income families raising children with severe disabilities – by forcing them through additional bureaucratic processes, regardless of the children’s medical prognoses.

Likewise, The NPRM offers no satisfactory justification for targeting most individuals who become eligible at Step 5 of the adjudicatory process for more frequent CDRs.⁸ There is no medical or scientific basis to conclude that individuals who are adjudicated in a particular fashion, regardless of the underlying medically determinable impairments, are more likely to improve more quickly than others. Most older adults receive benefits by showing that they cannot work. When one allows for the consideration of medical issues and pertinent factors such as age and education – factors required for assessment by the Social Security Act – older adults who cannot work because of their disabilities will be disproportionately harmed.

The NPRM provides no meaningful evidence that more frequent CDRs will get people back to work:

The NPRM’s stated goal is to identify medical improvement at the earliest point and interrupt the receipt of disability benefits, so that it will increase workforce participation and have a positive effect on employment. **There is no satisfactory evidentiary basis for this assumption.**

The proposal acknowledges that it has not provided a compelling evidentiary basis that this rule will meet this goal. Indeed, it states that although [SSA] believes “that there may be positive employment effects as a result of these proposed rules, [SSA] cannot currently quantify them.”⁹ It relies on mere guesses or wishes to justify a change that evidence shows to be harmful. Additionally, the data provided to support the NPRM’s argument tracks the return rate to “employment” but does not track the return rate at the “substantial gainful employment” level as defined by SSA. There is no meaningful support for the idea that shortening the time out of the workforce has a positive effect on return to full time employment. It is a cruel assumption that if you cut off basic disability benefits, an SSA recipient will return to the workforce regardless of their ability to do so, because they have no other choice. This measure is not just plainly and obviously arbitrary and capricious, but callous and pernicious.

IV. The Proposed Rule Underestimates the Cost of This Proposal

The proposal estimates that the increased administrative costs created by doing an additional 2.6 million reviews is \$1.8 billion for the ten-year period. However, we are concerned that SSA has underestimated true cost of this rule. Does this estimate account for the additional costs for appeals of CDR terminations at the Office of Hearing Operations or U.S. District Court level? If so, can SSA provide that estimate?

⁷ See 84 F.R. 63591, n. 50

⁸ See 84 F.R. 63593

⁹ See 84 F.R. 63591

Does this \$1.8 billion estimate specifically consider the costs SSA will incur adjudicating new claims from terminated individuals? If so, SSA should release that estimate. Under the terms of the NPRM, it does not appear that these very likely administrative costs have been considered, undermining the financial savings this rule predicts. If these costs are not included, the cost estimate is inadequate.

The NPRM assumes that the cost to the public of doing additional CDRs is \$16,352,000. Using SSA's at \$10.22 an hour estimate, the NPRM assumes that it will take 1,600,000 hours for the public to complete the paperwork related to 2.6 million reviews—or less than one hour to complete the paperwork for each review.¹⁰ What is the basis for this assumption? It takes far more time than the estimate just to complete the forms, let alone to participate in additional adjudicative processes.

This proposal acknowledges that the increase in medical reviews will also create a medical cost on medical offices, due to increased requests for medical records. The NPRM claims it is “not currently possible for us to estimate lost opportunity costs in this area.”¹¹ What studies, research, or other information were reviewed in order to come to this conclusion? Many beneficiaries have multiple impairments requiring the acquisition and review of records from many providers, often including specialists, to assess determined eligibility. The administrative and financial costs of getting these records is likely substantial and must be addressed.

V. Outstanding Questions

It's impossible to assess the true cost and impact of this proposed rulemaking because critical data is missing. In response to this comment, we ask that you respond to the following questions/concerns:

1. How many Total beneficiaries are expected to lose their benefits as a result of this new proposal, justifying the expected costs savings of 2.6 billion? Specifically:
 - a. How many child beneficiaries does SSA anticipate will have their benefits terminated as a result of this proposal?
 - b. How many Title II recipients does SSA anticipate will have their benefits terminated as a result of this proposal?
2. What is the basis for the assumption that a significant number of children may experience medical improvement due solely or coincidentally to them reaching the age of 12?
3. Please provide the most current information on beneficiaries who represent themselves while seeking disability benefits at the DDS and the Office of Hearing Operations, broken down as follows:
 - a. The number of adult Title XVI claims, nationwide and in Pennsylvania
 - b. The number of adult Title II claims, nationwide and in Pennsylvania
 - c. The number of adult concurrent Title XVI and Title II claims, nationwide and in Pennsylvania
 - d. The number of child Title XVI claims, nationwide and in Pennsylvania
 - e. The percentage of successful claims for beneficiaries with representation and percentage of successful claims for beneficiaries without representation.

¹⁰ See 84 F.R. 63596.

¹¹ *Id.*

4. Please provide the number of beneficiaries who represent themselves while appealing a termination of disability benefits at the DDS and the Office of Hearing Operations, nationwide and in Pennsylvania, from 2017 to the present, broken down as follows:
 - a. On the initial appeal of the cessation
 - b. At reconsideration
 - c. At the DHU hearing
 - d. At the Office of Hearing Operations (further broken down by hearing office)

As it stands now, the rule proposed by SSA will undoubtedly cause a disastrous impact to not only our Pennsylvania constituents, but people across the nation who rely on disability benefits. When President Reagan implemented a similar measure back in 1981, roughly 200,000 people lost their benefits. Many people suffered, and some even died before Reagan was forced to reverse the rule.¹² This new measure will put more than two million people at risk of losing benefits over the next 10 years with little to no evidence of any substantial benefits to the government. Please work with the Administration to ensure this rule does not move forward as proposed.

Sincerely,

Pennsylvania Members of Congress

Congresswoman Mary Gay Scanlon

Congresswoman Madeleine Dean

Congressman Brendan Boyle

Congresswoman Chrissy Houlahan

Congressman Michael Doyle

Congressman Dwight Evans

Congresswoman Susan Wild

Congressman Matt Cartwright

Congressman Conor Lamb

¹² Robert Pier, "Reagan Suspends Benefits Cutoff," *New York Times*. April 14, 1984.
<https://www.nytimes.com/1984/04/14/us/reagan-suspends-benefits-cutoff.html>. Accessed January 13, 2020.