

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

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**Written Statement for the Record
on behalf of the
National Organization of Social Security Claimants' Representatives**

Hearing on:

**Social Security Disability Benefits: Did a Group of Judges, Doctors, and
Lawyers Abuse Programs for the Country's Most Vulnerable?**

U.S. Senate Committee on Homeland Security & Governmental Affairs

October 7, 2013

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Founded in 1979, NOSSCR is a professional association of attorneys and other advocates who represent individuals seeking Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability benefits. NOSSCR members represent individuals with disabilities in proceedings at all SSA administrative levels, but primarily at the hearing level, and also in Federal court. NOSSCR is a national organization with a current membership of more than 4,000 members from the private and public sectors and is committed to the highest quality legal representation for claimants.

Our Social Security system provides peace of mind for all Americans. Not only does it provide the foundation for a secure retirement -- it also protects nearly all American workers and their families against the eventuality of a severe disability or illness that prevents substantial work. This peace of mind is all the more important because the alternatives are limited: fewer than 1 in 3 private sector workers has long term disability insurance through their employer, and such plans are often less adequate than under Social Security.¹ Social Security's disability programs provide vital economic security, as

well as access to health care for individuals whose impairments are so severe that they preclude substantial, gainful work. These income support programs are an integral component of our nation's Social Security system, reflecting the core American value of assisting those in need. We appreciate your interest in and attention to these critical programs.

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The allegations examined in the October 7, 2013, hearing and detailed in the Committee's report released in conjunction with that hearing, regarding alleged concerted fraudulent actions by an attorney and a former Administrative Law Judge (ALJ), are extremely troubling and should be vigorously pursued. If true, we condemn the alleged actions and encourage that all individuals involved be brought to justice.

It is important to emphasize that the Committee found no evidence that what was uncovered in Huntington is more than an isolated incident. As noted by Committee Chairman Tom Carper, "While we don't have any evidence that this is more than an isolated case, one example of inappropriate actions of this nature is one too many. I am encouraged that the Social Security Administration has already acknowledged many of the issues raised by the investigation, and I understand that it has begun to implement stronger reviews and other solutions."

We believe that these allegations represent the actions of outliers and are not representative of the thousands of claimants' representatives and hundreds of ALJs who work diligently and ethically to provide high quality service to claimants for disability benefits. We join the Chairman in urging caution not to let an egregious case of potentially unlawful behavior jeopardize the vital benefits of the millions of Americans with significant disabilities and severe illnesses for whom these benefits are a vital lifeline.

We condemn any misuse of the Social Security disability programs. We hold our members to high ethical standards and enforce an annual ethics education requirement. Any individual who seeks to abuse vital programs like the Social Security disability programs does so at the expense of the millions of vulnerable beneficiaries for whom benefits are a vital lifeline. We encourage anyone who suspects abuse of the Social Security disability programs to report it to the Social Security Administration (SSA) Office of Inspector General.

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The Social Security Administration works hard to ensure program integrity, but it requires adequate resources to do so. It has been deprived of the administrative resources required to conduct necessary program integrity work for several years – and the recent government shutdown has only stymied the agency further. Congress must provide SSA with sufficient administrative resources to ensure that benefits are paid to the right person, in the right amount, and at the right time — and to implement the array of critical safeguards that exist in current law.

SSA's administrative budget is only about 1.4 percent of benefits paid out each year. With the baby boomers entering retirement and their disability-prone years, SSA is experiencing dramatic workload increases at a time of diminished funding and staff. Over the last two years, Congress has appropriated \$421 million less for SSA's program integrity efforts (such as medical and work Continuing Disability Reviews and Title XVI redeterminations) than the Budget Control Act of 2011 authorized. Over the last three years, SSA has received nearly \$1 billion less for its Limitation on Administrative Expenses (LAE) than the President's request, and by the end of FY 2013 is expected to lose over 11,000 employees since FY 2011.

Adequate LAE is essential to preventing service degradation and ensuring that SSA can provide timely and accurate payments and perform necessary program integrity work, including:

- **Disability claims processing.** Adequate resources support claims processing and disability determinations at the initial levels so that the correct decision can be made at the earliest point possible and unnecessary appeals can be avoided. Inadequate staffing at field offices and state Disability Determination Services (DDS) leads to increased workload at the hearing level. Disability claims may be less thoroughly developed, leading to incorrect denials of benefits and more appeals. Additionally, the significant progress made in recent years at the hearing level in reducing average wait times until hearings and shrinking the disability claims backlog, will be eroded due to the lack of needed resources.
- **Pre-effectuation and continuance reviewsⁱⁱ of DDS determinations.** As required by the Social Security Act, SSA conducts pre-effectuation reviews of at least half of all DDS initial and reconsideration allowances for Title II (Social Security) and Title XVI (Supplemental Security Income) adult disability benefits. SSA also reviews a number of DDS Title II Continuing Disability Review (CDR) determinations that result in continuation of benefits. For every dollar spent in FY 2011 on these reviews SSA estimates a lifetime savings of about \$11 in Title II and Title XVI benefits.ⁱⁱⁱ
- **Disability Determination Services quality review.** SSA has implemented multiple levels of quality review at the DDS level. For example, SSA requires all DDSs to have an internal quality assurance function, and also operates an Office of Quality Performance (OQP) which conducts quality assurance reviews of samples of initial and reconsideration determinations of the DDSs.
- **Review of Administrative Law Judge (ALJ) decisions in a manner consistent with law.** While ALJs have qualified decisional independence, they are required to follow SSA laws, regulations and policies. SSA has implemented a quality review process for ALJ decisions. In FY 2011, the SSA Office of Disability Adjudication and Review (ODAR) established a new Quality Review (QR) initiative and opened four new Branches in the Office of Appellate Operations.

The QR Branches review a computer-generated sample of unappealed favorable ALJ decisions (over 7,000 in FY 2012), pre-effectuation, and then refer cases to the Appeals Council for possible review. If the Appeals Council accepts review, it can remand or issue “corrective” decisions, which may involve changing the favorable ALJ decision to a “partially” favorable decision or to an unfavorable decision. There is also some post-effectuation review of ALJ decisions. While these ALJ decisions cannot be changed, post-effectuation review enables targeted examination of compliance with agency policies and policy guidance and additional training as needed to ensure high quality decision-making.

- **CDRs and redeterminations.** To ensure that benefits are paid only as long as the individual remains eligible, SSA is required by law to conduct continuing disability reviews (CDR) in all cases where the beneficiary’s condition is expected to improve, or where improvement is considered possible, to ensure that benefits are paid only as long as the individual remains eligible. SSA estimates that every \$1 spent on medical CDRs saves the federal government \$9, but reports a current backlog of 1.3 million CDRs.^{iv} SSA also requires resources to conduct work CDRs for beneficiaries whose earnings suggest that they may no longer be eligible for benefits, as well as annual redeterminations for all Title XVI beneficiaries to ensure continued income and resource eligibility.
- **Cooperative Disability Investigations (CDI).** SSA and the Office of the Inspector General (OIG) jointly established the CDI Program in 1998. Twenty-five CDI units across the U.S. investigate individual disability applicants and beneficiaries, as well as potential third parties who are alleged to facilitate disability fraud. SSA or DDS personnel make referrals to a CDI unit for investigation, and CDI units also accept reports from the public via a toll-free telephone hotline and an online web form. Investigations uncovering fraud or attempted fraud can result in a denial, suspension, or termination of benefits, civil or criminal prosecution, and/or imposition of civil monetary penalties, and/or sanctions on claimant representatives for violation of SSA’s ethical standards. Since the program’s inception in FY 1998, CDI efforts have resulted in \$2.2 billion in projected savings to SSA’s disability programs.^v
- **Disability Fraud Pilot.** In July 2013, SSA and the OIG established a pilot project to detect and investigate allegations of “facilitator fraud.” Operating as an extension of the CDI program, the pilot includes an SSA Associate Chief Administrative Law Judge, a Deputy Assistant Inspector General for Investigations, and additional OIG investigative and audit personnel. The program employs a variety of means, including data mining, to identify and root out any potential efforts involving doctors, lawyers, judges, and/or other middlemen to defraud SSA.

In conclusion, the Social Security disability programs provide vital and much-needed economic security and access to healthcare for millions of Americans whose impairments are so severe that they preclude substantial work. We appreciate the Committee's interest in and attention to these vital programs.

ⁱ Department of Labor Bureau of Labor Statistics, Employee Benefits Survey, Table 16. Insurance benefits: Access, participation, and takeup rates, civilian workers, National Compensation Survey, March 2012; <http://www.bls.gov/ncs/ebs/benefits/2012/ownership/civilian/table12a.htm>.

ⁱⁱ "Pre-effectuation" refers to reviews conducted before benefits are authorized to be paid. Accordingly, "continuance reviews" and "post-effectuation reviews" are conducted after benefit authorization.

ⁱⁱⁱ Social Security Administration, June 27, 2013, Annual Report on Social Security Pre-Effectuation Reviews of Favorable State Disability Determinations, Fiscal Year 2011.

^{iv} Beatrice Disman, Regional Commissioner, New York Region, Social Security Administration, Statement for the Record, September 19, 2013, House of Representatives, Committee on Ways and Means, Social Security Subcommittee.

^v The Hon. Patrick O'Carroll, Inspector General, Social Security Administration, Statement for the Record, "Challenges Facing the Next SSA Commissioner," April 26, 2013, before the House of Representatives, Committee on Ways and Means, Social Security Subcommittee.