

INSIDE THIS ISSUE ...

[SCOTUS Arguments Scheduled | 4](#)

[NOSSCR in NOLA | 4](#)

[SSA Prehearing Review | 5](#)

[Reconsideration Returns | 5](#)

[Letter to the Editor | 5](#)

[EITC Affect on Clients | 6](#)

[116th Congress: Members of the
Committees of Jurisdiction | 7](#)

[NOSSCR's Schedule in D.C. | 13](#)

[Monthly Processing Time Stats | 16](#)

[ALJ Decisions by Representation | 17](#)

[Listings Grids Subscription | 18](#)

[Forum Articles Index 2018 | 19](#)

[First *Forum* in 1979 | 27](#)

[NOSSCR Timeline: 1979-1983 | 31](#)

[NOSSCR News | 2](#)

[Selected Cases | 32](#)

[Available Materials | 33](#)

[New Members | 34](#)

President Trump Re-nominates Andrew Saul as SSA Commissioner

Nominations of federal officials requiring Senate confirmation expire if that Congress ends and the nominees have not been confirmed. That was the case for the nominations of Andrew Saul for Commissioner of SSA and David Black for Deputy Commissioner when the 115th Congress ended on January 2. Andrew Saul was re-nominated on January 16 for the remainder of the term that ended on January 19, 2019, as well as the six-year term starting January 20, 2019 and running through January 19, 2025. These were the same two terms he had been nominated for in the previous Congress. David Black's nomination in the 115th Congress had only been to finish the remainder of the existing term that ended on January 19, 2019, but he was nominated for both terms when the nomination was sent back to the 116th Congress.

The Senate Finance Committee held a hearing on Saul's nomination in October 2018 and then the Committee unanimously advanced his nomination for consideration by the full Senate. However, no vote was held by the full Senate on his nomination. Had he been confirmed in the 115th Congress, it would only have been for the remainder of the first term, as the Senate Finance Committee

continued on page 8

Supreme Court Addresses Attorney's Fees

On January 8, 2019, in a unanimous opinion delivered by Justice Thomas, the U.S. Supreme Court held that 42 USC § "406(b)(1)(A)'s 25% cap applies only to fees for court representation and not to the aggregate fees awarded under §§ 406(a) and (b)." *Culbertson v. Berryhill*, 586 U.S. _____ (2019). The 11th Circuit's decision limiting the aggregate fees for administrative and court work to 25% is reversed and remanded.

The Supreme Court reasoned that the Social Security Act addresses fees in administrative proceedings separately from those in court proceedings: 42 USC § 406(b), which states that a court may award "a reasonable fee for *such representation*, not in excess of 25%" of past-due benefits refers only to the representation described in this section, which is "represent[ation] before the court." Fees in administrative proceedings are then separately addressed in §406(a): Section 406(a)(1), which involves the use of the fee petition at the administrative level, permits the agency to set any "reasonable" fee. When the fee agreement is used at the administrative level (406(a)(2)(A)), the fee must be the lesser of 25% of past-due benefits or the amount set by the Commissioner. Although Culbertson's client paid an Equal Access to Justice Act (EAJA) fee as well, the issue of the EAJA offset was not in the question presented and was not discussed by the Court.

Previously, the Social Security Act had often been interpreted to create a limit of 25% of past-due benefits for all fees, paid under both sections. The Supreme

continued on page 9

NOSSCR News

NOSSCR Celebrates 40 Years!

We are thrilled to recognize NOSSCR's 40th anniversary throughout 2019. Look for special features in each Forum commemorating this accomplishment. In each Forum issue this year we will present a NOSSCR timeline, highlighting some significant events for NOSSCR and the Social Security Administration. Another feature will be the reproduction of some of our original documents. See [page 27](#) of this issue for a complete copy of NOSSCR's first *Forum*, a four page newsletter published in July 1979.

You will see from the July 1979 Social Security

Listings/Grids Subscribers:

No updates have been sent since the last issue of the NOSSCR Forum. To subscribe to NOSSCR's *Manual of Listings and Grids*, please visit <https://nossacr.org/listings-impairments-grids-manual>. Subscription renewals must be received by February 28. If you subscribed in 2018 and did not receive your renewal notice, contact us at nossacr@nossacr.org.

Contacting NOSSCR

Have questions? In addition to the telephone and the mail, keep in mind that you can reach us by e-mail at nossacr@nossacr.org or fax at 201-567-1542. We are often able to respond most quickly to your written requests, whether sent by fax, e-mail or regular mail. If you send an e-mail, please complete the "subject" line. We are here to be of service to you.

Mission Statement

The mission of NOSSCR is to advocate for improvements in Social Security disability programs and to ensure that individuals with disabilities applying for Social Security Disability and SSI benefits have access to quality representation and receive fair decisions.

Forum that the more things change, the more they remain the same. The President's Message then is the same message we have today: "In order to fulfill our potential we need maximum effort from all of us to secure new members, to publicize our organization and to become actively involved in our activities." How can you help? Again, from 1979: "Please consider the following:

- 1) Searching your files for materials that you feel would be helpful to our membership. All members are urged to take time from their schedules and send this material to NOSSCR [See available materials in the Forum and in NOSSCR's [online store](#) for these unpublished decisions that members have provided].
- 2) Help publicize NOSSCR in your state and assist in recruiting new members.
- 3) Fill out . . . questionnaires and return them promptly to NOSSCR.
- 4) Assist in monitoring significant new case law . . .
- 5) PLAN TO BE AT THE [JUNE AND SEPTEMBER] SEMINAR[S]."

Did you attend the first NOSSCR meeting in New Orleans in 1979?

We are putting together a list of those who were there, so if that includes you, please email your name to Executive Director Barbara Silverstone (Barbara.Silverstone@nossacr.org).

Join us in Washington D.C. in June

NOSSCR's D.C. agenda is all set. See [page 13](#) for a full program schedule and registration information. You can register for the Conference and Capitol Hill Advocacy Day only, or begin the week participating in the group Supreme Court admission ceremony (separate registration required). This conference features some of the most requested issues. We are always told that you want more doctors to speak at the conferences, and we are pleased to announce that this conference will feature four medical sessions presented by doctors, as well as a session

continued on page 3

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NOSSCR News

continued from page 2

explaining what is happening with reconsideration, and an administrative and legislative update. Thank you to NOSSCR member Kevin Liebkemann, who assisted with finding the doctors to speak at this informative conference. Lunch is included on Tuesday. In the evenings we will offer group tickets to a Nationals v. Phillies baseball game on Monday night (\$30 per person) and the popular dine-arounds on Tuesday evening. Registration is limited and will be online only from February 8 through May 10, or until capacity is reached. We look forward to seeing you there!

NOSSCR's Capitol Hill Advocacy Day will be part of the spring conference in D.C. When you register for the conference, you will also be included in the advocacy day. This is an important time for your representatives to hear directly from you on issues of importance for your practice and your clients. We will provide a training and talking points and will arrange the meetings for those who register in advance. This year we are including an advocacy app to help organize your schedule and update your talking points.

And finally, if you are a NOSSCR member and admitted in good standing for at least 3 years to a state bar, we invite you to be admitted to the U.S. Supreme Court Bar in a group ceremony. Those who participated in the last group admission, held in 2012, will tell you it is a beautiful and moving ceremony held in the historic and elegant Supreme Courtroom. Even if you never plan on arguing a case before the Supreme Court, being admitted has its benefits – you do not have to wait in the public line if you want to hear an argument. Members of the Court can enter through a side entrance and are almost always guaranteed a seat in the courtroom to hear oral argument. Contact our Staff Attorney Lea Ko (Lea.Ko@nosscr.org) for more information about this group admission. Space is limited, and all required documents must be received by April 1, 2019.

NOSSCR in New Orleans

In September, we will celebrate NOSSCR's 40th anniversary in New Orleans, LA. This conference will include a 40th anniversary reception held offsite, a volunteer day of service, and an "old timers' panel where you can hear from some of our first NOSSCR

members. If you are interested in speaking at this conference, please be on the lookout for the speaker request form that will be emailed to all NOSSCR members soon, or email what you are prepared to speak about to CLE Coordinator Karyn Reffsin (Karyn.Reffsin@nosscr.org). We will make final selections about conference topics this spring.

How do you want to receive the Forum?

Now that the Forum is fully electronic we have more opportunities to offer it in different formats. Do you like it sent as a link to a PDF that you can download and print? Would you prefer it as an email with a list of headlines that link to full articles? Or is there another format that you believe would work better? We want to make sure we are providing you with this important information in the most readable format possible. Please respond to Communications Director Faigy Gilder (Faigy.Gilder@nosscr.org) with your Forum thoughts by February 22.

Listings/Grids Subscriptions

If you subscribe to NOSSCR's Listings/Grids Manual, be sure to send your renewal by February 28 to receive the discounted renewal price. And, remember, beginning this year you won't have to update your own manual – we do it all for you, store it on a password protected webpage, and send you an email whenever there is a change. New subscribers are always welcome. [Order your subscription today!](#)

Lisa Ekman is Chair of CCD

Congratulations to NOSSCR's Director of Government Affairs, Lisa Ekman, who was elected to a two-year term as Chair of the Board of Directors of the Consortium for Citizens with Disabilities (CCD). CCD is the largest coalition of national organizations advocating for inclusive federal policies for children and adults with disabilities. As noted in [NOSSCR's Press Release](#), CCD is comprised of over 100 organizations – from the American Academy of Pediatrics (AAP) to the National Alliance on Mental Illness (NAMI) – that work together to shape public policy through research, testimony, working closely with members of Congress, and encouraging grassroots advocacy efforts among people with disabilities.

Washington Updates

Four times a year NOSSCR's Office of Government Affairs provides a legislative and administrative update webinar to NOSSCR members. These

continued on page 4

NOSSCR News continued from page 3

popular webinars are free for sustaining members and \$25 for regular members. The 2019 Washington Webinar Updates are scheduled for the following Tuesdays at 1 pm Eastern: February 19, May 21, August 20 and November 19. [Register today!](#) Regular members – update to sustaining membership and save \$100 off these webinars! That's like getting a sustaining membership for only \$75!

Mark your calendar

Registration opens for NOSSCR's DC conference – February 8

Washington Update Webinars – February 19, May 21, August 20, November 19

Smith v Berryhill Oral Argument at US Supreme Court – March 18

Kisor v. Berryhill Oral Argument at US Supreme Court – March 27

Supreme Court Admission Day – June 17

NOSSCR's DC Medical Conference – June 17 – 19

Capitol Hill Advocacy Day – June 19

NOSSCR's 40th Anniversary Conference – September 11-14

Supreme Court Oral Arguments Scheduled

The Supreme Court will hear oral argument in *Smith v. Berryhill*, 17-1606 on Monday, March 18. The case asks “whether the Appeals Council’s decision to reject a disability claim on the ground that the claimant’s appeal was untimely is a ‘final decision’ subject to judicial review under Section 405(g).”

Oral arguments in *Kisor v. Wilkie*, 18-15, will be held on Wednesday, March 27. *Kisor v. Wilkie* is limited to the first question presented in the cert. petition, which asks whether the Court should overrule its decisions in *Auer v. Robbins*, 519 U.S. 452 (1997), and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), which “direct courts to defer to an agency’s reasonable interpretation of its own ambiguous regulation.” Although the agency involved in this case is the Department of Veterans Affairs, not SSA, the decision in this case will undoubtedly affect the deference courts give to SSA’s, and all agencies’, interpretation of its regulations when their meanings are at issue.

NOSSCR’s New Orleans Conference is Coming Soon!

NOSSCR is 40! 2019 begins the reflection of NOSSCR’s past years, the journey we have been on, and the planning of our future. New Orleans 1979 is where it all started, and New Orleans 2019 is where it will continue! Why go to New Orleans?

It’s a city that is steeped in European traditions and Caribbean influences. New Orleans is a gumbo of historic influences, a spicy mash up of cultures that range from Native American and African to Cuban, French, Spanish, Sicilian, Irish, and more. Much of that multicultural history is apparent in the city’s architecture, anecdotes, and incredible cuisine. Walking the city’s streets reveal an array of architectural treasures, all with a story to tell.

In New Orleans, to paraphrase onetime French Quarter resident and writer William Faulkner, the past isn’t dead. It’s not even past. No other city in America keeps its history as vital or as accessible as New Orleans. Entire neighborhoods, whole buildings, cemetery crypts, manhole covers, cobblestone streets and ancient oaks serve as touchstones to vanished eras.

Please join us this September as we celebrate our history and explore New Orleans!

SSA Selects Certain Cases for Prehearing Review

One of SSA's Compassionate And Responsive Service (CARES) initiatives to reduce the hearing-level backlog is SmartMands, which sends certain cases awaiting ALJ hearings back to the Disability Determination Service (DDS) level for additional review. The system used to identify cases for SmartMands and the National Adjudication Team (NAT) is called Proactive Analysis and Triage for Hearings (PATH).

When Deputy Commissioner for Hearings Operations Theresa Gruber presented at NOSSCR's conference in October 2018, she said that in FY18, just 8.5% of the 36,066 PATH-identified claims remanded from hearing offices to state agencies and related adjudicative components received favorable decisions on the record. The FY17 informal remand data shows an even lower allowance rate of 2.9%. SSA estimated in the CARES plan that approximately 3% of all pending cases (22,000 cases at the time) would qualify for a fully favorable decision on the record, but in two years SSA only granted such decisions to fewer than 4400 PATH-identified cases. Therefore, NOSSCR has asked SSA for more information on the PATH algorithm and encouraged the agency to work with NOSSCR to improve PATH, so that SSA locates more cases that qualify for fully favorable decisions and does not use SmartMands on as many cases where a fully favorable decision on the record is impossible.

The only decisions that can be issued via SmartMand or the NAT are fully favorable ones. Therefore, according to SSA's CARES coordinator, any case that would result in a partially favorable or unfavorable decision is "returned to the hearing office to their original 'place in line' (i.e. they are still in FIFO [first in, first out] based on the hearing request date). No action is needed by the claimant or their rep." While SSA does not call a Smartmand a "prehearing case review" (see https://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-10.html) it appears to be similar.

Reconsideration Returns

Reconsideration was reinstated in five of the 10 prototype states on January 1, 2019: New Hampshire; New York; Louisiana; Colorado; and California (Los Angeles North and West Branches). 83 Fed. Reg. 63965. "This means that for the residents in these locations who apply for Social Security Disability Insurance Benefits or Supplemental Security Income, or both, and who receive an initial denial determination on or after January 1, 2019, the first step of the appeals process will be to request a reconsideration of that determination. If [SSA denies] an individual at the reconsideration step, they may then seek further review of their claim by requesting a hearing before an administrative law judge."

Reconsideration will be reinstated in the five remaining states on a rolling basis by June 26, 2020:

- Pennsylvania: April 1, 2019
- Alabama: October 1, 2019
- Michigan: October 1, 2019
- Missouri: January 1, 2020
- Alaska: March 1, 2020

Given that one of SSA's reasons for reinstating reconsideration in these prototype states is to "have a national, unified disability process that affords all disability claimants the same appeal rights in all states," NOSSCR expects that the reinstatement procedures/process, explained above, will be the same in the five remaining states once reconsideration is reinstated in those states.

Letter to the Editor

I have reviewed SSA's new optional form fee agreement, the SSA-1693. This form lacks some of the disclosures Colorado Rule of Civil Procedure 23.3, which Colorado Rule of Professional Conduct 1.5 requires attorneys to follow. Attorney representatives in Colorado and other states should check their local professional conduct rules before deciding whether to use the 1693 form. I suspect that in most states the form is going to be inadequate.

Ann Atkinson, Esq.
Parker, Colorado

Earned Income Tax Credit Issues Can Affect Your Clients

It might come up during your preparation for a hearing, or a former client might come back for help after having their benefits suspended. It can be complicated to untangle, involving interactions with SSA, the IRS, and state offices of taxation. It's the situation where a tax return with the claimant's Social Security number is filed to claim the Earned Income Tax Credit (EITC) but the claimant's actual earnings were far lower or non-existent. It can be frustrating and complicated to work out, involving SSA, the IRS, and state revenue agencies, but there is much you can do to assist clients.

The first thing to do if you encounter this situation is to have a detailed discussion with the client. In the tax year at issue, did he or she work? If so, where, and how much were the earnings? Did your client file the tax return and receive the refund? If your client filed an incorrect tax return, you may have serious reservations about continuing to represent him or her, and you may want to suggest your client contact a tax lawyer to discuss possible consequences and remedies before you make any representations to SSA on their behalf.

But in many cases, the client is adamant that he or she did not file the return, did not have the earnings listed on the return, and did not get a refund. The first time such a client might be aware that a return was filed in his or her name is when you tell them you saw information in their claims file about earnings (SSA receives earnings information from the IRS) or when a beneficiary receives notice that their benefits are being suspended or terminated for excess income (this is often accompanied by a large overpayment). Such clients may be the victims of identity theft, where someone else has filed a false tax return and receives a refund. SSA's Office of the Inspector General [has studied this issue](#), finding many cases where the claimant's Social Security Number (SSN) was misused, as well as others where the claimant misreported income in a manner that allowed them to obtain an EITC.

Again, speak with your client. Did she tell someone her SSN in exchange for money? Was his cousin saying weird stuff about taxes the last time they talked? If your client knows who may have filed the false return, you will want to help him or her think carefully about the consequences (both legal and personal) of reporting it, helping the client get

advice from other professionals as needed.

If you believe the client to be the victim of identity theft, there is much that can be done to correct SSA's records. SSA's form to correct the earnings record is the [SSA-7008](#). Since this form is more commonly used for situations where people's earnings need to be added, not removed from, the earnings record, make sure to give a clear explanation in the remarks section. Another option allowed in the [POMS for disclaiming earnings](#) (RM 03870.060) is to use a signed statement, such as the [SSA-795](#).

For additional evidence that the client did not have the earnings that were reported to SSA, your client can complete the IRS [Identity Theft Affidavit](#). The IRS does not have the resources to respond to every claim of identity theft but it can be useful to show SSA that the client has reported the issue to the IRS. Although it can be difficult to obtain the fraudulent return (the IRS will generally only send tax transcripts to the address listed on the return, which for obvious reasons is unknown to the client in this type of case), if the client is able to obtain the return they can explain on the affidavit all of the things that were incorrect about the return, such as state of residence, number of children, income, etc. The [taxpayer advocate](#) or member of Congress' constituent services staff might be useful in helping to obtain the tax transcript. If the client does obtain the transcript and it was filed along with a state tax return, the state revenue office often has its own forms for reporting suspected identity theft. And if the federal tax transcript indicates that the return was completed by a tax preparer, that person can be reported using [IRS form 14157](#). Expect that the government shutdown, which furloughed most IRS employees, will hinder communications with that agency.

Once SSA corrects the earnings record ([POMS RM 03870.000](#) has a table of contents for directions for field office staff on how to do this), your client may be able to obtain or restore their benefits and eliminate alleged overpayments. However, removing earnings from the record can also change clients' date last insured and the amount of Title II benefits for which they qualify. It is important to be aware of these changes so you can counsel your client about them.

116th Congress: Members of the Committees of Jurisdiction

Congressional leaders have named the members of committees for the 116th Congress. House leadership has named both full committee and subcommittee leadership and members, but the Senate had yet to designate subcommittee membership and leadership as of the printing of this article. Here is the membership of the Senate Committee on Finance and the House Committee on Ways and Means and its Social Security and Worker and Family Support (which has jurisdiction over SSI and was formerly known as Human Resources) Subcommittees:

Senate Committee on Finance

Chuck Grassley, Chair (R-Iowa)
 Ron Wyden, Ranking Member (D-OR)
 Mike Crapo (R - ID)
 Debbie Stabenow (D - MI)
 Pat Roberts (R - KS)
 Maria Cantwell (D - WA)
 Michael B. Enzi (R - WY)
 Robert Menendez (D - NJ)
 John Cornyn (R - TX)
 Thomas R. Carper (D-DE)
 John Thune (R - SD)
 Benjamin L. Cardin (D-MD)
 Richard Burr (R - NC)
 Sherrod Brown (D-OH)
 Johnny Isakson (R - GA)
 Michael F. Bennet (D-CO)
 Rob Portman (R - OH)
 Robert P. Casey, Jr. (D-PA)
 Patrick J. Toomey (R - PA)
 Mark R. Warner (D-VA)
 Tim Scott (R - SC)
 Sheldon Whitehouse (D-RI)
 Bill Cassidy (R - LA)
 Maggie Hassan (D-NH)
 James Lankford (R - OK)
 Catherine Cortez Masto (D-NV)
 Steve Daines (R - MT)
 Todd Young (R - IN)

House Committee on Ways and Means

Richard Neal (D-MA), Chair
 Kevin Brady (R-TX) Ranking Member
 John Lewis (D-GA)
 Devin Nunes (R-CA)
 Lloyd Doggett (D-TX)
 Vern Buchanan (R-FL)
 Mike Thompson (D-CA)

Adrian Smith (R-NE)
 John Larson (D-CT)
 Kenny Marchant (R-TX)
 Earl Blumenauer (D-OR)
 Tom Reed (R-NY)
 Ron Kind (D-WI)
 Mike Kelly (R-PA)
 Bill Pascrell (D-NJ)
 George Holding (R-NC)
 Danny Davis (D-IL)
 Jason Smith (R-MO)
 Linda Sanchez (D-CA)
 Tom Rice (R-SC)
 Brian Higgins (D-NY)
 David Schweikert (R-AZ)
 Terri Sewell (D-AL)
 Jackie Walorski (R-IN)
 Suzan DelBene (D-WA)
 Darin LaHood (R-IL)
 Judy Chu (D-CA)
 Brad Wenstrup (R-OH)
 Gwen Moore (D-WI)
 Dan Kildee (D-WI)
 Brendan Boyle (D-PA)
 Don Beyer (D-VA)
 Dwight Evans (D-PA)
 Brad Schneider (D-IL)
 Tom Suozzi (D-NY)
 Jimmy Panetta (D-CA)
 Stephanie Murphy (D-FL)
 Jimmy Gomez (D-CA)
 Steven Horsford (D-NV)

Social Security Subcommittee

Democrats:

Chair: Rep. John Larson (CT)
 Rep. Bill Pascrell (NJ)
 Rep. Linda Sanchez (CA)
 Rep. Brian Higgins (NY)
 Rep. Dan Kildee (MI)
 Rep. Brendan Boyle (PA)
 Rep. Brad Schneider (IL)

Republicans:

Ranking Member Tom Reed (NY)
 Rep. Jodey Arrington (TX)
 Rep. Drew Ferguson (GA)
 Rep. Ron Estes (KS)

continued on page 8

President Trump Re-nominates Andrew Saul as SSA Commissioner continued from page 1

has a long-standing tradition of not confirming people for appointments that start in a future congress due to the belief that the Senators in office at the time that the term begins should be the ones to confirm the nominee. The Senate Finance Committee will not need to hold another hearing on the nomination of Saul and can send his nomination forward to the full Senate with a simple vote. No hearing was held on David Black's nomination in the 115th Congress so it is likely the Senate Finance Committee will hold a hearing if the Senate wants to move his nomination forward.

Although most of the nominees to the Social Security Administration in the 115th Congress failed to get full Senate votes on their nominations, Gail Ennis was confirmed by voice vote to be the Inspector General at SSA on January 2, the last day of the 115th Congress. The Senate Finance Committee held a hearing on her nomination on September 27, 2018 and her nomination was reported favorably by the Finance Committee last November. Ennis was sworn in on January 29.

Several other Social Security related nominations expired at the end of the 115th Congress and were resubmitted by the Trump Administration for consideration in the 116th: Michael Astrue and Jason Fichtner to the Social Security Advisory Board, and James Lockhart to be a member of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (Public Trustee) for a term of four years.

It is not clear whether and when the Senate might act on these nominations. The Senate confirmed 76 other Trump Administration nominees along with Gail Ennis on the last day of the 115th Congress. There were approximately 300 additional nominees, including 85 federal judges, whose nominations faced the same fate as Andrew Saul's and David Black's. Something, most likely a hold placed on the nomination by one or more Senators, prevented Andrew Saul's nomination from being included in the end of session deal agreed to by senate leadership. Whether the hold, or whatever prevented Saul's confirmation from being included in the session-ending deal in early January, has been lifted or resolved will likely determine if and

when his nomination (and the other Social Security related nominees) move forward and are confirmed.

One positive development about Andrew Saul's nomination is that there will no longer be any concerns regarding whether Nancy Berryhill can continue to serve as Acting Commissioner based on the requirements of the Federal Vacancies Reform Act of 1988. The act allows for someone to continue to serve in an acting capacity without a time limit "once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate." The renomination of Andrew Saul means that Berryhill can continue to serve as Acting Commissioner as long as his nomination is pending before the Senate.

116th Congress: Members of the Committees of Jurisdiction continued from page 7

Worker and Family Support (Previously Human Resources) Subcommittee:

Democrats:

Chair: Rep. Danny Davis (IL)
Rep. Judy Chu (CA)
Rep. Terri Sewell (AL)
Rep. Gwen Moore (WI)
Rep. Dwight Evans (PA)
Rep. Stephanie Murphy (FL)
Rep. Jimmy Gomez (CA)

Republicans:

Ranking Member Jackie Walorski (IN)
Rep. Brad Wenstrup (OH)
Rep. Ron Estes (KS)
Rep. Darin LaHood (IL)

Notable changes include the addition of Senator Jim Lankford (R-OK) to the Senate Finance Committee and Representative Tom Reed (R-NY) joining and becoming ranking member of the Social Security Subcommittee of the House Committee on Ways and Means.

Supreme Court Addresses Attorney's Fees continued from page 1

Court said that § 406(a) limits the fees under the fee agreement to the lesser of \$6,000 or 25% of past-due benefits, and under the fee petition to a reasonable fee. In addition, § 406(b) provides for a separate, reasonable fee not in excess of 25% of past-due benefits.

Section 406(b) applies a flat 25% cap on fees for court representation. By contrast, §406(a) provides two ways to determine fees for agency proceedings. Subsection (a)(2) caps fees based on a fee agreement at the lesser of 25% of past-due benefits or \$6,000... If there is no fee agreement, the agency may set any fee, including a fee greater than 25% of past-due benefits, so long as the fee is "reasonable."

Because §406(b) by its terms imposes a 25% cap on fees only for representation before a court, and §406(a) has separate caps on fees for representation before the agency, we hold that the statute does not impose a 25% cap on aggregate fees.

The Supreme Court also concluded that the fact that SSA withholds a single pool of 25% of past-due benefits for direct payment is not relevant to the total fee that can be authorized for representation before the agency or the court. Notably, the Court said that even though SSA's current "policy" limits withholding to 25% of past-due benefits, such a withholding limit is not based on the law: "The statutory text provides for two pools of money for direct payment of fees. See §§406(a)(4), (b)(1)(A). The agency's choice to withhold only one pool of 25% of past-due benefits does not alter this text. More fundamentally, the amount of past-due benefits that the agency can withhold for direct payment does not delimit the amount of fees that can be approved for representation before the agency or the court." However, the Supreme Court punted on whether SSA should change/increase the 25% withholding limit: "Any concerns about a shortage of withheld benefits for direct payment and the consequences of such a shortage are best addressed to the agency, Congress, or the attorney's good judgment."

What is the effect of the Culbertson decision on my fees?

To best understand this decision, it is important to review the sections of the Social Security Act

involved:

42 USC § 406 (a)(1):

Except as provided in paragraph (2)(A) [fee agreement section], whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this title, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

42 USC § 406(b)(1)(A):

Whenever a court renders judgment favorable to a claimant under this subchapter, who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgement, and the Commissioner of Social Security may... certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgement, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

See Also HALLEX I-1-2-71 (A): Fee Authorizations Under sections 206(b)(1) and 1631(d)(2) of the Social Security Act (Act), a Federal court that renders a judgment favorable to the claimant has jurisdiction to authorize a reasonable fee for an attorney who represented the claimant before the court. However, the attorney's fee for services in court may not exceed 25 percent of the total of past-due benefits to which the claimant is entitled. If a court awards a fee under this provision, the Social Security Administration (SSA) may pay the fee from past-due benefits.

See also 20 CFR §404.1728:

(a) *Representation of a party in court proceedings.* We shall not consider any service the representative gave you in any proceeding before a State or Federal

continued on page 10

Supreme Court Addresses Attorney's Fees **continued from page 9**

court to be services as a representative in dealings with us. However, if the representative also has given service to you in the same connection in any dealings with us, he or she must specify what, if any, portion of the fee he or she wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, he or she must file the request and furnish all of the information required by § 404.1725.

(b) *Attorney fee allowed by a Federal court.* If a Federal court in any proceeding under title II of the Act makes a judgment in favor of a claimant who was represented before the court by an attorney, and the court, under section 206(b) of the Act, allows to the attorney as part of its judgment a fee not in excess of 25 percent of the total of past-due benefits to which the claimant is entitled by reason of the judgment, we may pay the attorney the amount of the fee out of, but not in addition to, the amount of the past-due benefits payable. We will not certify for direct payment any other fee your representative may request.

See also 20 CFR 404.1528.

Does the Culbertson decision mean I will receive a fee of 50% of my client's past-due benefits?

No, *Culbertson* does not say that fees can or should equal 50% of past-due benefits. The Supreme Court held that fee authorizations under 406(a) (for administrative work) and 406(b) (for court work) should be read independently of each other and that there is no cumulative 25% cap for all fees. The decision does not say that fees will, or should be, 50% of past-due benefits. Fee petitions and federal court fee contracts will still be evaluated for reasonableness, and the fee agreement is still limited to the lesser of 25% of past-due benefits or \$6,000.

Am I now automatically entitled to a fee of 25% of past-due benefits for my court work?

No, when determining a fee in federal court, *Gisbrecht v. Barnhart*, 122 S.Ct. 1817 (2002), requires the court to look first to the contingent fee contract, then test it for reasonableness. The

attorney has the burden of showing that the requested fee is reasonable. According to the Supreme Court in *Gisbrecht*, when determining whether a fee contract is reasonable, the court will look at 1) the character of the representation; 2) whether representation was substandard; 3) whether the attorney was responsible for delay; 4) the results the representative achieved; 5) whether benefits are large in comparison to the time spent on the case; and 6) whether the attorney is receiving a windfall.

Will SSA withhold 50% of past-due benefits?

No, the decision does not instruct SSA to withhold 50% of past-due benefits, though it does imply that the statute would permit withholding of a higher percentage of fees. There is no indication that SSA has any interest in increasing the percentage of fees withheld.

The Court noted: "Any shortage of withheld benefits for direct payment of fees is thus due to agency policy." Under §406(a)(4), the agency "shall" certify for direct payment of agency representation fees "an amount equal to so much of the maximum fee as does not exceed 25 percent of" past-due benefits. In other words, this subsection requires that the agency withhold the approved fees for work performed in agency proceedings, up to 25% of the amount of the claimant's past-due benefits. But this is not the only subsection that enables the agency to withhold past-due benefits for direct payment of fees. Section 406(b)(1)(A) provides that the agency "may" certify past-due benefits for direct payment of court representation fees.

How can I amend my fee agreement to provide for a higher fee for existing clients?

Attorneys should consider their ethical obligations and consult state bar rules about the propriety of renegotiating an existing contract with clients.

The Model Rules of Professional Conduct, Rule 1.5(b), states that an attorney and client should have an understanding about fees, and that the fee agreement shall be "preferably in writing."

continued on page 11

Supreme Court Addresses Attorney's Fees continued from page 10

Attorneys will have to consider whether amending the fee contracts for existing clients will violate the clients' understanding about fees, particularly taking into account the clients' mental status. Attorneys should also review the applicable state contract laws when deciding whether an existing contract can be amended without additional consideration

How should I write new fee agreements to allow for a higher fee?

Under the fee agreement process, your administrative fee will continue to be limited to the lesser of 25% of past-due benefits or \$6,000. *Culbertson* does not make any changes to fees solely for administrative work. Whether you use the fee agreement or fee petition for your administrative work, you should make sure your client understands that it does not cover fees for court work.

If you will be representing your client in federal court, we recommend having separate contracts for your administrative and federal court work. Under *Culbertson*, this contract can state that the attorney may seek approval of a fee of up to 25% of past-due benefits, which is separate from, and in addition to, the fee owed to the representative at the administrative level. You could also use a two-tiered fee agreement to state that the attorney's fee will be the lesser of 25% of past-due benefits or \$6k if the claim is approved at or below a specific level of the administrative appeals process (e.g. the first ALJ hearing decision or by the Appeals Council), but if the claim progresses beyond that level of the administrative appeals process, the attorney will request a fee of 25% of the claimant's past-due benefits for administrative work. If the claim progresses to federal court, the attorney will request a separate/additional fee of 25% of the claimant's past-due benefits for court work.

The contract should also provide that if the court awards an attorney fee out of the past-due benefits (§ 406(b)) and also awards an EAJA fee for the same work, the attorney will refund the smaller fee.

What should my agreement look like if I am the federal court attorney but someone else represented the claimant at the administrative

level?

Culbertson allows for a fee for federal court work of up to 25% of the claimants' past-due benefits. This fee is in addition to any administrative fee. If your prior contract included a cumulative cap of 25% of past-due benefits for administrative and court fees, you can remove that provision for future cases and state that the attorney may seek approval of a fee of up to 25% of past-due benefits, which is separate from, and in addition to, the fee owed to the representative at the administrative level.

The contract should also provide that if the court awards an attorney fee out of the past-due benefits (§ 406(b)) and also awards an EAJA fee for the same work, the attorney will refund the smaller fee.

If SSA withholds only 25% anyway, doesn't that mean that is the maximum fee allowed?

The US Supreme Court considered this argument and held otherwise. "This argument is plausible, but the statutory text in fact provides for two pools of money for direct payment of fees... The agency's choice to withhold only one pool of 25% of past-due benefits does not alter the statutory text, which differentiates between agency representation in §406(a) and court representation in §406(b), contains separate caps on fees for each type of representation, and authorizes two pools of withheld benefits."

How will I be paid if the total fee awarded is more than 25% of the claimant's past-due benefits?

Culbertson did not change the percentage of past-due benefits that SSA will withhold for direct payment. Therefore, if you are authorized a total fee of more than 25% of past-due benefits, you will receive 25% paid directly from SSA, and will have to look to your client for the excess. The procedures when SSA erroneously fails to withhold will not apply to a fee in excess of 25%.

How will the fee be divided if there is are different representatives at the administrative and federal court level and more than 25% of

continued on page 12

Supreme Court Addresses Attorney's Fees continued from page 11

past-due benefits are authorized?

The withheld amount of the fee will be divided proportionally. POMS GN 03920.050 provides guidance on how SSA will release the withheld fee when a fee higher than 25% of past-due benefits has been authorized for more than one representative.

Wouldn't a 50% fee be unreasonable?

As mentioned several times during the oral argument and in the Court's decision, the final determination of the amount of fee to be authorized under the fee petition or in court is made by an ALJ or a Judge who will authorize a "reasonable" fee. This "reasonableness" standard should protect against the receipt of an unreasonable fee, regardless of the percentage permitted.

Although each section of the statute is read separately to allow for separate fee authorizations, you may be required to reveal what you have received from one forum on your petition to the other, so the total fee authorized will be known when determining what would be a reasonable fee. The Model Rules of Professional Conduct prohibit the charging of an unreasonable fee. Model Rule 1.5 (a) states: A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.

If the court authorizes 25% of past-due benefits for my fee before a remand, won't the ALJ just decide that's enough of a fee anyway?

The fee authorizer should not consider the time spent in court, but may consider the fee already received.

HALLEX I-1-2-57B (second bullet point) states that "In evaluating the amount of time a representative spent on the case, the fee authorizer must exclude any time claimed for... services the representative did not provide before SSA. (See HALLEX I-1-2-5 and I-1-2-71 B.)". HALLEX I-1-2-71B, provides that "In some situations, a representative may be authorized a fee by both a court and SSA. This dual authorization results from a strict interpretation of sections 206(b)(1) and 1631 (D)(2) of the Act that indicates the court's authorization is for services

before the court only."

The regulations on evaluating fee petitions (remember there are no regulations for the fee agreement) provide that one of the criteria considered when evaluating a request for a fee for administrative work is "The amount of fee the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred." 20 CFR 404.1725 (b)(vii).

What does *Culbertson* say about EAJA fees?

Although EAJA fees were involved in the case at issue in *Culbertson*, the Supreme Court did not mention them. In appropriate situations, the attorney should seek EAJA fees for work performed in federal court and should reimburse the lesser of the fees received when receiving both EAJA fees and § 406(b) fees, because an attorney cannot receive both EAJA and 406(b) fees for the same work.

Previously, an attorney may have sought 25% of past-due benefits for administrative work, and only EAJA fees for court work. Since there were no § 406(b) fees sought, there was nothing to reimburse to the client. Under *Culbertson*, when applicable, the attorney can seek authorization for 25% of past-due benefits for administrative work, 25% of past-due benefits for court work, and EAJA fees. The attorney would then reimburse the client the lesser of the § 406(b) and EAJA fees. In some situations, this may result in a higher fee for the attorney or more of the past-due benefits retained by the client.

I only do administrative work. Does this case affect me?

Because *Culbertson* involves the cumulative amount of fees for administrative and court level work, the decision does not change anything for fee arrangements for cases that are successful at the administrative level. However, if another attorney takes your cases to federal court, *Culbertson* may affect the total fee that may be authorized and owed by your client.



Medical Mini Conference & Hill Day

Washington, D.C. Master Schedule

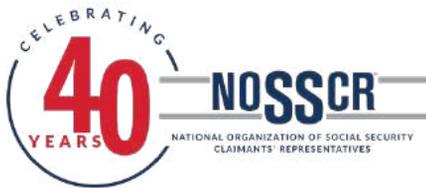
All times, sessions, and activities are subject to change.

Monday, June 17, 2019

8:00 am	Supreme Court Breakfast advance registration and extra charge
9:00 am – 12:00 pm	Supreme Court Admission, Lecture, and Photo advance registration and extra charge
3:30 pm – 5:00 pm	DC Update and Hill Day Preparation with Lisa Ekman, Director of Government Affairs; Stacy Cloyd, Associate Director of Government Affairs; and Prime Advocacy, Hill visits organizer
7:05pm Evening Event	Nationals v. Philadelphia Baseball Game optional add-on with registration and extra charge

Tuesday, June 18, 2019

7:00 am – 8:00 am	Continental Breakfast
8:00 am – 8:30 am	Welcoming Remarks
8:30 am – 10:00 am	The Neuropsychology of Competitive Employment: Measurement of Essential Mental Abilities <i>Ernest Aucone, Ph.D., ABPP-CN & Jennifer Strang, Ph.D., ABPP-CN</i> SSA has identified a number of “mental abilities” that are important for “any job.” These include: (1) Understanding, carrying out, and remembering simple instructions; (2) use of judgment; (3) responding appropriately to supervision, coworkers, and usual work situations; and (4) dealing with changes in a routine work-setting. Often, a claimant is referred to a neuropsychologist who administers a battery of psychometric tests to help determine that claimant’s functioning with regard to these mental abilities. The purpose of this seminar is to familiarize legal professionals with the role of a neuropsychologist in determining a person’s ability to function optimally in a work setting; to discuss the underlying cognitive abilities (e.g., simple and complex attention, executive functioning, learning/memory, receptive and expressive language, abstract reasoning) that support successful employment; and to describe how “mental abilities” are measured in a typical neuropsychological evaluation. Much emphasis will be placed on executive functioning, defined as that set of interrelated control processes involved in the planning, initiation, maintenance, and monitoring of goal-directed behavior. Related psychiatric factors (e.g.,



psychosis, serious mood disturbance, substance use) that can impact occupational functioning also will be discussed.

10:00 am – 10:15 am **Coffee Break**

10:15 am – 11:45 am **Doctor it Hurts when I Move—Disabilities of the Musculoskeletal System**

Ann Hirschman, RN-C, FNP, MPH

The session will review the musculoskeletal listings and related issues and will include some discussion of chronic pain as well. Participants are urged to ask questions.

11:45 am – 12:45 pm **Lunch with Speakers**

Speakers TBD, included with registration

12:45 pm – 2:15 pm **Doctors Treating Children: A Day in the Life**

Jayshree Kumta, M.D. & Kevin Liebkemann, J.D.

Dr. Jayshree Kumta will walk you from start to finish through what happens when a child comes in for medical treatment, from the medical care provider's perspective. What subjective information is gathered from the child and family? What objective information is gathered in a typical physical examination, how is that documented, and what does it mean? How do doctors make a diagnosis? How do doctors document child development, functional limitation and disability? In a usual treatment setting, who else besides the doctor interacts with the child and family? What are their roles, what documentation do they generate, and how is it accessed? What additional resources do doctors have available to assist child patients and their families? Attorney Kevin Liebkemann will discuss the significance of the information Dr. Kumta provides to the handling of disability claims.

2:15 pm – 3:45 pm **Reconsider This**

Jennifer Burdick, Supervising Attorney, Community Legal Services of Philadelphia; Steven Rollins, Director, Bureau of Disability Determinations, Pennsylvania Department of Labor; & Leon Scales, Director, Bureau of Disability Determinations, Virginia Department of Labor

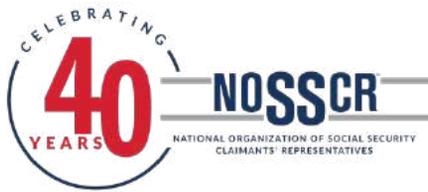
In 2018 Social Security reconsidered its use of Reconsideration Review and expanded its application to 10 states that have not had this level of review for 20 years. This session will give an overview of the state of reconsideration across the country, what advocates need to know during the transition, and consideration for issues and opportunities created by it. We will offer perspectives from a non-prototype state who has always had reconsideration, as well as from a prototype state that recently restored reconsideration level review.

3:45 pm – 4:00 pm **Coffee Break**

4:00 pm – 5:30 pm **Disability Migraine and Headache Disorder**

Robert Shapiro, M.D., Ph. D.

In this session, I will discuss the definition and diagnostic criteria for migraine, disability and impairments due to migraine, current state of



the process of making an SSDI claim for migraine – as viewed by a neurologist, and ongoing efforts to improve the process of sequential evaluation for migraine SSDI claimants.

Evening Event

Join a Dine-Around for Dinner
optional and additional cost

Wednesday, June 19, 2019

7:00 am – 8:30 am

Continental Breakfast

Meet at the hotel if you have any last-minute questions before heading out to your meetings. A representative from Prime Advocacy will be available to assist you.

9:00 am –

Hill Visits

NOSSCR's Director of Government Affairs will be available on Capitol Hill to assist you with your visits.

Ready to Sign Up?

Registration: \$320.00 sustaining member, \$395.00 regular member, \$495.00 non-member.

Registration is available **online only** at <http://bit.ly/nosscrdc> from February 8th through May 10, 2019 or until capacity is reached.

Registration is limited to 200 attendees. There is **no** “on site” registration and **no** refunds.

Hotel: Our host hotel is the JW Marriott Washington, DC, 1331 Pennsylvania Avenue, NW, Washington, DC 20004. NOSSCR has secured a special room rate of \$289.00 per night for single or double. This rate is available for reservations made until 6:00 pm (Eastern Time) May 24, 2019, or until the room block is exhausted, whichever comes first. We also have a limited number of rooms for Sunday, June 16.

Reservations can be made by calling 1-800-393-2503 and asking for the NOSSCR conference.

For your convenience, you can make reservations online at:

<https://book.passkey.com/e/49842286>

Monthly Processing Time Statistics

PAGE 1

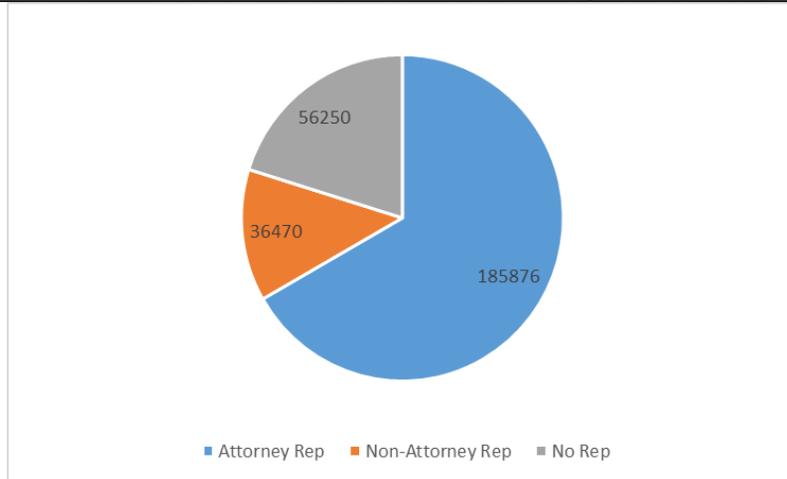
CASELOAD ANALYSIS REPORT
 NATIONAL
 Month Ending: 12/28/2018 Run Date: 01/22/2019
 ODAR WORKLOAD AND PERFORMANCE SUMMARY

	FY18	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY19
Work Days	250	19	23	17										59
ALJs Duty	1643.67	1593.00	1568.00	1561.00										1574.00
ALJs Avail	1487.21	1495.69	1474.43	1463.10										1477.74
Adjusted Receipts	567911	42738	49289	37891										129918
Receipts Total	568870	42827	49353	37953										130133
VH Opt Out	201519	15509	17652	13312										46473
Receipts Daily	2275.48	2254.05	2145.78	2232.53										2205.64
Receipts Daily Per Available ALJ	1.53	1.51	1.46	1.53										1.49
Transfers In	238168	27228	19698	13024										59950
Transfers Out	238168	27228	19697	13024										59949
Dispos Total	765554	60337	74526	52010										186873
Dispos Daily	3062.22	3175.63	3240.26	3059.41										3167.34
ALJ Dispos Total	765554	60337	74466	51898										186701
ALJ Dispos Daily	3062.22	3175.63	3237.65	3052.82										3164.42
ALJ Dispos Daily Per Avail ALJ	2.06	2.12	2.20	2.09										2.14
Attorney Adj Dispos Total	0	0	60	112										172
Attorney Adj Dispos Daily	.00	.00	2.61	6.59										2.92
DISP/REC Ratio	135	141	151	137										144
DISP/ADJ Receipts	135	141	151	137										144
Prod Index	93.90	96.55	98.15	98.74										97.78
Total O/T Hours	679675.82	62901.75	80908.08	62406.50										206216.33
Average Proc Time	595	541	540	530										538
Opening Pending	1056026	858383	840784	815547										858383
Closing Pending Total	858383	840784	815547	801428										801428
Closing Pending Per Duty ALJ	534.15	527.80	520.12	513.41										513.41
Pending Over 120 Days	693067	675183	651362	641841										641841
% Pending Over 120 Days	81	80	80	80										80
Pending Over 180 Days	604809	589257	567706	557770										557770
% Pending Over 180 Days	70	70	70	70										70
Pending Over 270 Days	473836	456030	437493	432883										432883
% Pending Over 270 Days	55	54	54	54										54
Pending Over 365 Days	349633	340050	321768	311940										311940
% Pending Over 365 Days	41	40	39	39										39
Pending > 365 Per Duty ALJ	217.57	213.47	205.21	199.83										199.83
Pending 750 and Over Days	19770	22519	24066	25043										25043
% Pending 750 and Over Days	2	3	3	3										3
Pending 800 and Over Days	9184	11001	13179	14842										14842
% Pending 800 and Over Days	1	1	2	2										2
Pending 850 and Over Days	6952	6733	6569	8003										8003
% Pending 850 and Over Days	1	1	1	1										1
Pending 900 and Over Days	5039	5024	4649	4502										4502
% Pending 900 and Over Days	1	1	1	1										1
Pending 1000 and Over Days	2544	2518	2396	2462										2462
% Pending 1000 and Over Days	0	0	0	0										0

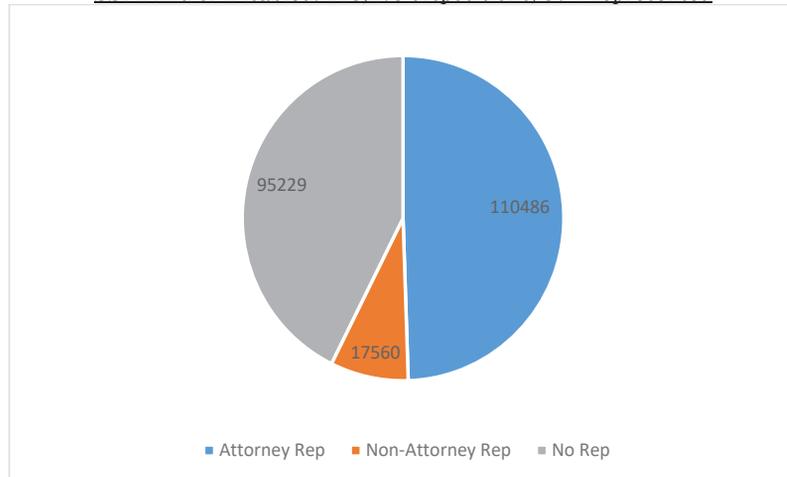
Per-ALJ calculations exclude 172 dispositions for Attorney Adjudicator Cases; there are 68 cases pending for Attorney Adjudicators.
 To date, 216 cases have been deleted.

What Percentage of ALJ Decisions and Dismissals Had Representation in Fiscal Year 2018?

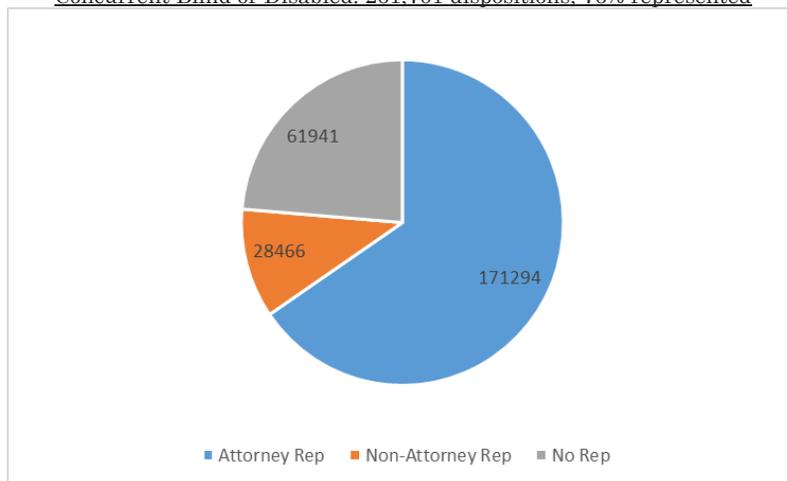
Title II Disabled Worker, Adult Child, or Widow/er: 278,596 dispositions, 80% represented



SSI Blind or Disabled: 223,275 dispositions, 57% represented



Concurrent Blind or Disabled: 261,701 dispositions, 76% represented



Source: Data supplied by SSA to NOSSCR in response to FOIA request

NOSSCR™ LISTINGS OF IMPAIRMENTS/GRIDS SUBSCRIPTION

SSA intends to revise all listings on a regular basis. SSA also issues Rulings on evaluating specific impairments and occasionally revises its list of compassionate allowances.

To keep you current with these revisions, NOSSCR offers an online-based subscription to the Listing of Impairments for Adults, Listing of Impairments for Children, the Medical-Vocational Guidelines (Grids), selected Social Security Rulings and the list of Compassionate Allowances. **NEW THIS YEAR:** All subscribers will have access to a password protected, "subscribers only" website containing the most recent version of this important material. Best of all, there is no updating process on your end! Whenever there is an update to any of the listings/grids content, you will be sent an email notifying you of this, which will include an explanation of all of the specific changes made. By ordering NOSSCR's subscription, you will always receive all changes as soon as they occur.

NEW 2019 ORDERS ONLY

2018 subscribers have received renewal information. If you were a subscriber in 2018 and have not received renewal information or need it to be resent, please email nosscr@nosscr.org.

The purchase price for a new subscription in 2019 is **\$255 for regular members, \$204 for sustaining members, and \$382 for non-members**. This price includes timely notification and access to an updated web-based publication of the Listings and Grids, and updates of all final changes in the Listings of Impairments for Adults, the Listings of Impairments for Children, and the Medical-Vocational Guidelines (Grids) issued through the end of 2019. When a Social Security Ruling on a specific impairment is issued, we will share that with you as well. The web-based publication utilizes PDF documents, so you can easily download or print relevant sections to bring with you to your hearings. All subscriptions run until December 31, 2019 regardless of when ordered, so order yours today!

To pay by check, please send payment and this form to:
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LISTINGS/GRIDS NEW ORDER FOR JANUARY 1, 2019- DECEMBER 31, 2019

Name of New Subscriber: _____
Firm: _____
Address: _____
City, State, Zip: _____
Phone: _____
Number of New Subscriptions: _____
Amount Enclosed: _____

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FORUM ARTICLES INDEX – 2018 January 2018 to December 2018

	Month/page/year
ALJ'S DUTIES	
<i>Gonzales v. Colvin</i> , 191 F.Supp.3d 401 (M.D.Pa. 2015)	Apr/7/18
<i>Combs v. Berryhill</i> , 868 F.3d 704 (8 th Cir. 2017)	May/17/18
<i>Laborn v. Berryhill</i> , 867 F.3d 1151 (9 th Cir. 2017)	June/15/18
<i>Harris o/b/o N.L.K. v. Berryhill</i> , 293 F.Supp.3d 365 (W.D.N.Y. 2018)	July/11/18
ARTHRITIS	
SSA Proposes Revisions to Musculoskeletal Listings	May/1/18
ATTORNEYS' FEES	
See also NON-ATTORNEY FEE WITHHOLDING; EAJA	
Dealing with 1099-MISC Forms from SSA	Jan/1/18
NOSSCR Helps Members Obtain Representative Fees	Jan/1/18
Maximum User Fee Increases	Jan/4/18
NOSSCR Comments on SSA's Proposed Fee Agreement Form [Comments Reprinted on Pages 11-20]	Jan/10/18
New Procedures for Processing of SSA-1695 Forms	Mar/6/18
Supreme Court Grants Cert on Case Regarding Attorney's Fees	May/6/18
Attorneys Argue For and Against a Cumulative Cap in Attorneys' Fees [Summary of SCOTUS Oral Arguments in <i>Culbertson v. Berryhill</i>]	Nov/9/18
Heads Up: Form 1099-MISCs Issued in January	Dec/1/18
SSA Issues Standardized Fee Agreement Form	Dec/8/18
2019 User Fee Remains at 6.3%	Dec/13/18
APPEALS COUNCIL	
New Appeals Council Contacts	Feb/3/18
Look Out for Single Submission and Subsequent Filing Issues	Feb/9/18
New Email for Aged Remands	Mar/3/18
SSA Instructions Implementing the Seventh Circuit's <i>Casey</i> Holding	Mar/11/18
Online Request for Appeals Council Review Now Available	June/3/18
iAppeals Update	July/7/18
Supreme Court Grants Cert. Petition in <i>Smith v. Berryhill</i>	Nov/12/18
How do Different ALJs' Decisions and Dismissals Fare at the Appeals Council? [Adapted from a Proactive FOIA Disclosure on Agreement Rates by Individual ALJs Based on Appeals Council Actions Taken Between December 2016 to December 2017]	Nov/19/18
AVAILABLE MATERIAL	
Forum Articles Index: January to December 2017	Jan/21/18
2017 List of Available Materials (Nos. 2151-2179)	Feb/13/18
BENEFIT CALCULATION	
Practice Tip: Childcare Dropout Years Can Increase SSDI Benefits	May/7/18
2019 COLA Announced	Oct/4/18
COMPASSIONATE ALLOWANCES	
Five New Compassionate Allowance Conditions	Aug/6/18
CONGRESS	
After Three-Day Shutdown, Congress Has Until February 8 to Craft New Spending Deal	Jan/1/18
New Faces on Senate HELP and Aging Committees	Jan/4/18
Congress Makes Progress on Fiscal Year 2018 Spending Agreement, While President Proposes FY19 Budget	Feb/1/18
Congress Finalizes Fiscal Year 2018 Spending; SSA Administrative Funding Increased	Mar/1/18
Hearings Address Social Security	May/13/18

Legislative Update: New Bills	July/6/18
Testimony of Lisa Ekman at the Social Security Subcommittee Hearing on “Examining Changes to Social Security’s Disability Appeals Process”	July/15/18
SSA Plan to Reinstate Reconsideration in Prototype States Comes Under Fire in House Hearing	Aug/1/18
SSA Receives Appropriation for Fiscal Year 2019	Sept/1/18
Senate Finance Committee Considers Nominee for SSA Commissioner	Sept/3/18
Hearing Held to Consider Nomination of SSA’s Inspector General	Sept/3/18
Senators Introduce Bipartisan Bill on ALJ Hiring	Sept/4/18
Congressional Hearing Discusses Social Security IT Modernization	Sept/7/18
Andrew Saul Appears to be Headed for Confirmation as SSA Commissioner Following Senate Hearing	Oct/1/18
SSA Moves Forward with Reinstating Reconsideration Despite Congressional Concern	Oct/6/18
Impact of the Election on Social Security in the 116 th Congress	Nov/1/18
CREDIBILITY/SUBJECTIVE SYMPTOM EVALUATION	
Two Rulings Rescinded [SSR 96-3p and SSR 96-4p]	June/8/18
<i>Popa v. Berryhill</i> 872 F.3d 901 (9 th Cir. 2017)	June/15/18
<i>Kaduchak v. Colvin</i> , 196 F.Supp.3d 1059 (D.Ariz. 2016)	Oct/32/18
<i>Plessinger v. Berryhill</i> , 900 F.3d 909 (7 th Cir. 2018)	Dec/63/18
DISABLED CHILDREN (SSI)	
<i>A.B. on Behalf of Y.F. v. Colvin</i> , 166 F.Supp.3d 512 (D.N.J. 2016)	Mar/18/18
EAJA	
<i>Skvorak v. Berryhill</i> , 264 F.Supp.3d 12 (D.D.C. 2017)	Feb/11/18
<i>Gardner v. Berryhill</i> , 856 F.3d 652 (9 th Cir. 2017)	July/11/18
ELECTRONIC DISABILITY PROCESS (eDIB)	
Look Out for Single Submission and Subsequent Filing Issues	Feb/9/18
Online Request for Appeals Council Review Now Available	June/3/18
Electronic Records Express (ERE) User Guide for Uploading Files Without a Barcode [February 2017]	June/24/18
iAppeals Update	July/7/18
SSA Requests Input on Electronic Medical Records	Sept/4/18
New POMS on Duplicative Evidence	Sept/5/18
Congressional Hearing Discusses Social Security IT Modernization	Sept/7/18
New Electronic Features on mySSA Accounts	Sept/11/18
Changes to SSA’s Online Application Process	Nov/1/18
NOSSCR Advocates for Electronic Records Express Expansion	Nov/8/18
SSA Updates NOSSCR on Plans to Improve ERE	Dec/9/18
FRAUD	
<i>Justiniano v. Social Sec. Admin.</i> , 876 F.3d 14 (1 st Cir. 2017)	Sept/19/18
What We Learned at NOSSCR’s Fall Disability Law Conference [Highlighted Eric Conn 2.0 A New Call for Volunteers]	Oct/5/18
Ninth Circuit Finds Claimant’s Fourth Amendment Rights Violated by Cooperative Disability Investigation Unit Agent [Written by NOSSCR member Paul Eaglin, Esq.]	Nov/6/18
Letter to the Editor [re: <i>Whalen v. McMullen</i> , 907 F.3d 1139 (9 th Cir. 2019) written by NOSSCR member George Andre Fields, Esq.]	Dec/4/18
FEDERAL COURT	
New Email for Aged Remands	Mar/3/18
Judicial Conference Recommends Change to Use of Claimants’ Names	Aug/6/18
Updated Addresses for Service of Process on SSA	Dec/8/18
Government Shutdown Leads to Stays in Some Federal Courts	Dec/9/18
Update on Successful <i>Lucia</i> Challenges	Dec/12/18
FIBROMYALGIA	
<i>Vanprooyen v. Berryhill</i> , 864 F.3d 567 (7 th Cir. 2017)	June/15/18

GAO AND OIG REPORTS

GAO Report Shows Positive Effect of Representation Feb/1/18
Office of the Inspector General Reports on Reasons for OHO Delays May/6/18

HEADACHES

Bowers-Crawford v. Acting Com'r of SSA, 291 F.Supp.3d 912 (D.Ariz. 2017) Sept/20/18

HEARINGS (OHO)

Practice Tip: Sometimes the Five-Day Rule Does Not Apply Feb/3/18
SSA Issues Emergency Message on *Lucia vs. SEC* Feb/4/18
Practice Tip: Which Evaluation of Medical Evidence Rules Apply? Feb/9/18
What Makes Hearing Offices More or Less Productive? Feb/10/18
The Number of People Awaiting ALJ Hearings Drops Below a Million,
But the Time They Must Wait for a Decision Remains High Mar/6/18
SSA Expands Pre-Hearing Outreach to Unrepresented Claimants Apr/5/18
Supreme Court Weighs Classification of ALJs in *Lucia v. SEC* May/1/18
Office of the Inspector General Reports on Reasons for OHO Delays May/6/18
National Caseload Analysis Report for Month Ending
04/27/2018 – ODAR Workload and Performance Summary May/8/18
ALJ Award Rate Decreases May/11/18
Attorney Advisor Program Extended Until August 2019 June/7/18
Backlog and Processing Time Decrease but Still High June/8/18
FAQs on Program Uniformity June/9/18
Electronic Records Express (ERE) User Guide for Uploading Files
Without a Barcode [February 2017] June/24/18
Lucia and Executive Order on ALJ Hiring Creates Uncertainty in SSDI
Adjudication Process [NOSSCR's Memo Reprinted on Pages 28-30] July/1/18
Backlog Continues to Decline July/6/18
What is the Voluntary Standby Pilot? July/7/18
Update on *Lucia v. SEC* and the Executive Order on ALJ Hiring Aug/5/18
National Caseload Analysis Report for Month Ending
06/29/2018 – ODAR Workload and Performance Summary Aug/7/18
Attorney Advisor Program Made Permanent Aug/20/18
Senators Introduce Bipartisan Bill on ALJ Hiring Sept/4/18
SSA Pilots Pre-Hearing Development Contacts Sept/6/18
National Caseload Analysis Report for Month Ending
07/27/2018 – ODAR Workload and Performance Summary Sept/21/18
Hearing Offices' Monthly Processing Time [Cases Pending and Average
Processing Time for each OHO as of the end of FY18] Oct/14/18
SSA Proposes More Strict Video Hearing Rules Nov/4/18
NOSSCR Advocates for Electronic Records Express Expansion Nov/8/18
National Caseload Analysis Report for Month Ending
09/28/2018 – ODAR Workload and Performance Summary Nov/20/18
SSA Updates NOSSCR on Plans to Improve ERE Dec/9/18
Update on Successful *Lucia* Challenges Dec/12/18
National Caseload Analysis Report for Month Ending
11/30/2018 – ODAR Workload and Performance Summary Dec/14/18
On the Record Decision Vary Across Hearing Offices Dec/15/18
NOSSCR Comments on Proposed Rulemaking on Setting the Manner for the
Appearance of Parties and Witnesses at a Hearing Dec/18/18

HOUSEHOLD CHORES

Gonzales v. Colvin, 191 F.Supp.3d 401 (M.D.Pa. 2015) Apr/7/18
Thomas v. Berryhill, 881 F.3d 672 (8th Cir. 2018) May/16/18

LACK OF COUNSEL

Torres-Pagan v. Berryhill, 899 F.3d 54 (1st Cir. 2018) Dec/63/18

LAY WITNESS TESTIMONY

Diedrich v. Berryhill, 874 F.3d 634 (9th Cir. 2017) Dec/64/18

LISTING OF IMPAIRMENTS

SSA Proposes Revisions to Musculoskeletal Listings May/1/18

NOSSCR's Comments on Proposed Revisions to the Musculoskeletal Listings	June/16/18
MANUAL DEXTERITY	
<i>Lamear v. Berryhill</i> , 865 F.3d 1201 (9 th Cir. 2017)	May/16/18
MEDICAID	
Medicaid Work Requirements May Affect Disability Claimants	Jan/4/18
Medicaid "Community Engagement" Requirements May Affect Your Clients' Eligibility for Coverage	Apr/4/18
MEDICAL EXPERT/ADVISOR	
<i>Akin v. Berryhill</i> , 877 F.3d 314 (7 th Cir. 2018)	Aug/22/18
MEDICARE	
New Medicare Cards Coming Soon	Mar/5/18
MEDICAL RECORDS	
Pennsylvania Raises Fee for Providing Medical Records	Jan/6/18
California Expands Eligibility for Free Medical Records, Updates Rates	Mar/16/18
Learning the Basics of HIPAA and HITECH	May/10/18
SSA Requests Input on Electronic Medical Records	Sept/4/18
New POMS on Duplicative Evidence	Sept/5/18
Amendments to Charges for Medical Records in Pennsylvania	Dec/8/18
MENTAL IMPAIRMENTS/INTELLECTUAL DISABILITIES	
Posttraumatic Stress Disorder Fact Sheet [Developed by SSA]	Mar/13/18
<i>Burton v. Berryhill</i> , 267 F.Supp.3d 520 (E.D.Pa. 2017)	Apr/6/18
<i>Patterson v. Com'r of Soc. Sec. Admin.</i> , 846 F.3d 656 (4 th Cir. 2017)	May/17/18
<i>Brothers v. Colvin</i> , 233 F.Supp.3d 320 (N.D.N.Y. 2017)	July/11/18
Practice Tip: Post-Operative Cognitive Dysfunction	Sept/16/18
MISC. MATERIALS	
SSA Announces Top Baby Names	May/3/18
FOCUS: Injustices in the Social Security Disability System (<i>Boatner v. Berryhill</i>)	July/5/18
Harvard Law Offers Free Online Access to Millions of Court Decisions	Nov/12/18
MULTIPLE SCLEROSIS	
<i>Seney v. Colvin</i> , 185 F.Supp.3d 475 (D.Del. 2016)	Mar/18/18
NEUROLOGICAL IMPAIRMENTS	
<i>Kaminski v. Berryhill</i> , 894 F.3d 870 (7 th Cir. 2018)	
NON-ATTORNEY FEE WITHHOLDING	
See also ATTORNEYS' FEES	
Non-Attorney Representative Exam Scheduled for May 30	Feb/3/18
New Procedures for Processing of SSA-1695 Forms	Mar/6/18
NOSSCR	
NOSSCR Helps Members Obtain Representative Fees	Jan/1/18
Corrections: Senator Harkin's Congressional Tenure	Jan/3/18
Corrections: Sustaining Members	Jan/3/18
NOSSCR Comments on SSA's Proposed Fee Agreement Form [Comments Reprinted on Pages 11-20]	Jan/10/18
Conference Update	Jan/10/18
Forum Articles Index: January to December 2017	Jan/21/18
The Conference is Coming	Feb/3/18
Look Out for Single Submission and Subsequent Filing Issues	Feb/9/18
NOSSCR Executive Director Presents to National Academies Panel	Mar/7/18
Stay in the Know! [Info About NOSSCR's "Daily Clips" Email Subscription]	Mar/11/18
NOSSCR Files Amicus Brief in <i>Lucia v. SEC</i> [Brief Reprinted on Pages 11-35]	Apr/1/18
Practice Tips and Take-Aways from the Atlanta Conference	May/4/18
Liebkemann and Harkin Win Sweeney Awards	May/5/18
NOSSCR Submits Comments on SSA-1695 Form	

[Comments Reprinted on Pages 14-15]	May/13/18
SSA Responds to NOSSCR Advocacy on Filing New Claims	June/3/18
Seeking Stories of When SSA Doesn't Follow Its Own Five-Day Rule	June/7/18
NOSSCR's Comments on Proposed Revisions to the Musculoskeletal Listings	June/16/18
<i>Lucia</i> and Executive Order on ALJ Hiring Creates Uncertainty in SSDI Adjudication Process [NOSSCR's Memo Reprinted on Pages 28-30]	July/1/18
Testimony of Lisa Ekman at the Social Security Subcommittee Hearing on "Examining Changes to Social Security's Disability Appeals Process"	July/15/18
Q&A with SSA Officials Continued from NOSSCR's Spring Conference	Aug/4/18
NOSSCR Sponsors SCOTUS Admission Day for Members	Aug/6/18
My NOSSCR Journey by Jim Brown, Esq. of Cleveland, OH (NOSSCR President 1992-1993)	Sept/10/18
Letter to the Editor [About Being Proud to be a NOSSCR Member]	Oct/3/18
What We Learned at NOSSCR's Fall Disability Law Conference	Oct/5/18
Meet Your Board: NOSSCR Members Representing You	Oct/10/18
SSA Presentation at the NOSSCR Conference's Welcoming General Session	Oct/18/18
NOSSCR Advocates for Electronic Records Express Expansion	Nov/8/18
NOSSCR Comments on Proposed Rulemaking on Setting the Manner for the Appearance of Parties and Witnesses at a Hearing	Dec/18/18
ONSET DATE	
<i>Vanprooyen v. Berryhill</i> , 864 F.3d 567 (7 th Cir. 2017)	June/15/18
Three New Social Security Rulings Issued [Two on Determining EODs in Disability & Blindness Cases]	Oct/1/18
<i>Walker v. Berryhill</i> , 900 F.3d 479 (7 th Cir. 2018)	Nov/34/18
PAST RELEVANT WORK	
<i>Bailey v. Berryhill</i> , 250 F.Supp.3d 782 (D.Colo. 2017)	Feb/11/18
RECONSIDERATION	
SSA Plans to Reintroduce Reconsideration in All States	July/4/18
SSA Plan to Reinstate Reconsideration in Prototype States Comes Under Fire in House Hearing	Aug/1/18
SSA Moves Forward with Reinstating Reconsideration Despite Congressional Concern	Oct/6/18
Reconsideration Reinstatement Effective Dates	Nov/8/18
REMAND v. REVERSAL	
<i>Lee v. Colvin</i> , 197 F.Supp.3d 1237 (D.Or. 2016)	Apr/7/18
<i>Norris v. Colvin</i> , 160 F.Supp.3d 1251 (E.D.Wash. 2016)	July/13/18
<i>Leon v. Berryhill</i> , 880 F.3d 1041 (9 th Cir. 2017)	Aug/22/18
<i>Jimenez v. Berryhill</i> , 300 F.Supp.3d 1295 (D.Colo. 2018)	Nov/35/18
<i>Kenner v. Berryhill</i> , 316 F.Supp.3d 530 (D.D.C. 2018)	Dec/64/18
REPRESENTATION	
Maximum User Fee Increases	Jan/4/18
NOSSCR Comments on SSA's Proposed Fee Agreement Form [Comments Reprinted on Pages 11-20]	Jan/10/18
GAO Report Shows Positive Effect of Representation	Feb/1/18
Practice Tip: Sometimes the Five-Day Rule Does Not Apply	Feb/3/18
Practice Tip: Which Evaluation of Medical Evidence Rules Apply?	Feb/9/18
New Procedures for Processing of SSA-1695 Forms	Mar/6/18
A Summary of Sources for Vocational Data	Mar/8/18
Letter to the Editor [from Mark S. Lucas re: use of photos in ALJ hearings]	Apr/2/18
NOSSCR Submits Comments on SSA-1695 Form [Comments Reprinted on Pages 14-15]	May/13/18
New Regulations for Representative Conduct Will Go Into Effect on August 1	June/1/18
Seeking Stories of When SSA Doesn't Follow Its Own Five-Day Rule	June/7/18
FAQs on Program Uniformity	June/9/18
Electronic Records Express (ERE) User Guide for Uploading Files Without a Barcode [February 2017]	June/24/18
Update on the New Representative Code of Conduct	July/1/18
<i>Lucia</i> and Executive Order on ALJ Hiring Creates Uncertainty in SSDI	

Adjudication Process [NOSSCR's Memo Reprinted on Pages 28-30]	July/1/18
SSA Insight on the New Representative Code of Conduct	Aug/1/18
Update on <i>Lucia v. SEC</i> and the Executive Order on ALJ Hiring	Aug/5/18
Multiple Social Security Rulings Rescinded	Sept/9/18
IRS Mileage Reimbursement Rate Increases	Dec/8/18
SSA Issues Standardized Fee Agreement Form	Dec/8/18
Update on Successful <i>Lucia</i> Challenges	Dec/12/18
2019 User Fee Remains at 6.3%	Dec/13/18
REPRESENTATIVE PAYEE	
Representative Payee Updates	Sept/6/18
Representative Payee Regulations Proposed	Oct/4/18
RES JUDICATA	
<i>Earley v. Com'r of Social Sec.</i> , 893 F.3d 929 (6 th Cir. 2018)	Sept/19/18
RESIDUAL FUNCTIONAL CAPACITY	
NOSSCR Executive Director Presents to National Academies Panel	Mar/7/18
<i>Lanigan v. Berryhill</i> , 865 F.3d 558 (7 th Cir. 2017)	Mar/17/18
<i>Woods v. Berryhill</i> , 888 F.3d 686 (4 th Cir. 2018)	Nov/34/18
SIGNIFICANT NUMBER OF JOBS	
<i>Buck v. Berryhill</i> , 869 F.3d 1040 (9 th Cir. 2017)	Oct/32/18
An Unsolved Mess: Analyzing the Social Security Administration's Methodology for Identifying Occupations and Job Numbers [Part 1; Written by NOSSCR member Professor Peter J. Lemoine, Esq.]	Nov/7/18
An Unsolved Mess: Analyzing the Social Security Administration's Methodology for Identifying Occupations and Job Numbers [Part 2; Written by NOSSCR member Professor Peter J. Lemoine, Esq.]	Dec/52/18
SOCIAL SECURITY ADMINISTRATION	
Did You Know? [SSA disclosed the resumes of its political appointees]	Jan/6/18
SSA Extends Authority for Attorney Advisor Program	Jan/10/18
SSA Issues Emergency Message on <i>Lucia vs. SEC</i>	Feb/4/18
Congress Finalizes Fiscal Year 2018 Spending; SSA Administrative Funding Increased	Mar/1/18
SSA Acting Commissioner Berryhill Steps Down; Will Run Agency from Deputy Commissioner Role	Mar/1/18
New Procedures for Processing of SSA-1695 Forms	Mar/6/18
SSA Instructions Implementing the Seventh Circuit's <i>Casey</i> Holding	Mar/11/18
President Trump Nominates Commissioner and Deputy Commissioner of Social Security	Apr/1/18
SSA Proposes Revisions to Musculoskeletal Listings	May/1/18
SSA Catches Flak for Field Office Closures	May/7/18
New Regulations for Representative Conduct Will Go Into Effect on August 1	June/1/18
Supreme Court Ruling in <i>Lucia</i> Leaves SSA's ALJs in Uncertain Position	June/4/18
White House Plan Repeats Existing Proposals for SSA Reform	June/6/18
Attorney Advisor Program Extended Until August 2019	June/7/18
Disability Research Consortium	June/8/18
FAQs on Program Uniformity	June/9/18
SSA Plans to Reintroduce Reconsideration in All States	July/4/18
SSA Plan to Reinstate Reconsideration in Prototype States Comes Under Fire in House Hearing	Aug/1/18
SSA Insight on the New Representative Code of Conduct	Aug/1/18
Q&A with SSA Officials Continued from NOSSCR's Spring Conference	Aug/4/18
Update on <i>Lucia v. SEC</i> and the Executive Order on ALJ Hiring	Aug/5/18
Attorney Advisor Program Made Permanent	Aug/20/18
SSA Receives Appropriation for Fiscal Year 2019	Sept/1/18
Senate Finance Committee Considers Nominee for SSA Commissioner	Sept/3/18
Hearing Held to Consider Nomination of SSA's Inspector General	Sept/3/18
Congressional Hearing Discusses Social Security IT Modernization	Sept/7/18
New Electronic Features on mySSA Accounts	Sept/11/18
Andrew Saul Appears to be Headed for Confirmation as SSA	

Commissioner Following Senate Hearing SSA Moves Forward with Reinstating Reconsideration Despite Congressional Concern	Oct/1/18 Oct/6/18
SSA Presentation at the NOSSCR Conference's Welcoming General Session	Oct/18/18
Two Totalization Agreements Entered into Force	Nov/4/18
SSA Expands Use of WorkTrack System	Nov/5/18
U.S.-Slovenian Totalization Agreement	Dec/12/18
SOCIAL SECURITY ADVISORY BOARD	
Fichtner and Astrue Nominated to Social Security Advisory Board	Sept/1/18
SOCIAL SECURITY AND MEDICARE TRUST FUNDS	
Trustees Report Extends Estimated Solvency of SSDI Trust Fund to 2032	June/1/18
Public Trustee of the Social Security Trust Funds Nominated	Aug/3/18
SOCIAL SECURITY RULINGS	
Obsolete Regs and SSRs Removed	May/11/18
SSA Responds to NOSSCR Advocacy on Filing New Claims [Involves Misapplication of SSR 11-1p]	June/3/18
Two Rulings Rescinded	June/8/18
Multiple Social Security Rulings Rescinded	Sept/9/18
Three New Social Security Rulings Issued [Determining EODs in Disability & Blindness Cases and Failure to Follow Prescribed Treatment]	Oct/1/18
STATISTICS	
"Waterfall Chart" Shows Higher ALJ Award Rate and More AC Denials [FY 2017 Workload Data: Disability Decisions Reprinted on Page 5]	Feb/4/18
What Makes Hearing Offices More or Less Productive?	Feb/10/18
Did You Know? [Average SSDI Benefit Amount for Women Beneficiaries Adapted from Center on Budget and Policy Priorities Statistics]	Mar/9/18
ALJ Productivity Statistics [Dispositions Per Day Per ALJ Ranking Report FY18 through 3/30/18]	Apr/10/18
National Caseload Analysis Report for Month Ending 04/27/2018 – ODAR Workload and Performance Summary	May/8/18
ALJ Award Rate Decreases	May/11/18
Backlog and Processing Time Decrease but Still High	June/8/18
Backlog Continues to Decline	July/6/18
National Caseload Analysis Report for Month Ending 06/29/2018 – ODAR Workload and Performance Summary	Aug/7/18
National Caseload Analysis Report for Month Ending 07/27/2018 – ODAR Workload and Performance Summary	Sept/21/18
Hearing Offices' Monthly Processing Time [Cases Pending and Average Processing Time for each OHO as of the end of FY18]	Oct/14/18
Social Security Disability and Supplemental Security Income (SSI) Disability Claims [Initial and Reconsideration Adjudicative Level Allowance Rates FY 2018 by Nation, Region and State – SSA State Agency Operations Report (SAOR) Produced on October 30, 2017]	Nov/16/18
Representation Rates at Various Stages of Appeal Title II Claims, Fiscal Years 2016 and 2017	Nov/18/18
How do Different ALJs' Decisions and Dismissals Fare at the Appeals Council? [Adapted from a Proactive FOIA Disclosure on Agreement Rates by Individual ALJs Based on Appeals Council Actions Taken Between December 2016 to December 2017]	Nov/19/18
National Caseload Analysis Report for Month Ending 09/28/2018 – ODAR Workload and Performance Summary	Nov/20/18
National Caseload Analysis Report for Month Ending 11/30/2018 – ODAR Workload and Performance Summary	Dec/14/18
SUPPLEMENTAL SECURITY INCOME (SSI)	
Practice Tip: SSI Benefits and Ownership of Joint Bank Accounts	July/8/18
Nonprofit Files Class Action About SSI Resource Practices	Sept/8/18
Justice in Aging Seeks SSI Recipients' Reasonable Accommodations Input	Nov/5/18

SUPREME COURT

Supreme Court Weighs Classification of ALJs in <i>Lucia v. SEC</i>	May/1/18
Supreme Court Grants Cert on Case Regarding Attorney's Fees	May/6/18
Supreme Court Ruling in <i>Lucia</i> Leaves SSA's ALJs in Uncertain Position	June/4/18
<i>Lucia</i> and Executive Order on ALJ Hiring Creates Uncertainty in SSDI Adjudication Process [NOSSCR's Memo Reprinted on Pages 28-30]	July/1/18
SCOTUS Nominee Brett Kavanaugh on Social Security	July/3/18
Update on <i>Lucia v. SEC</i> and the Executive Order on ALJ Hiring	Aug/5/18
What We Learned at NOSSCR's Fall Disability Law Conference [Highlighted Supreme Court Update]	Oct/5/18
Attorneys Argue For and Against a Cumulative Cap in Attorneys' Fees [Summary of SCOTUS Oral Arguments in <i>Culbertson v. Berryhill</i>]	Nov/9/18
Supreme Court Grants Cert. Petition in <i>Smith v. Berryhill</i>	Nov/12/18
<i>Biestek v. Berryhill</i> Argument Analysis	Dec/1/18

TAXES

Practice Tip: Taxation of SSDI Benefits Offset by Workers' Compensation	Mar/4/18
Think Tank Proposes Changes to Social Security Taxes	Mar/17/18

WEIGHT OF MEDICAL EVIDENCE

Practice Tip: Which Evaluation of Medical Evidence Rules Apply?	Feb/9/18
<i>Kneeland v. Berryhill</i> , 850 F.3d 749 (5 th Cir. 2017)	Feb/11/18
<i>Moreno v. Berryhill</i> , 882 F.3d 722 (7 th Cir. 2018)	Apr/6/18

WORKERS' COMPENSATION OFFSET

Practice Tip: Taxation of SSDI Benefits Offset by Workers' Compensation	Mar/4/18
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VETERANS' BENEFITS

<i>Salmond v. Berryhill</i> , 892 F.3d 812 (5 th Cir. 2018)	Aug/22/18
VA Amends Regulations on Certain Benefits Programs	Sept/11/18
<i>Taylor v. Colvin</i> , 196 F.Supp.3d 1120 (N.D.Cal. 2016)	Oct/33/18

VOCATIONAL EXPERT TESTIMONY

<i>Gann v. Berryhill</i> , 864 F.3d 947 (8 th Cir. 2017)	Feb/11/18
A Summary of Sources for Vocational Data	Mar/8/18
<i>Moreno v. Berryhill</i> , 882 F.3d 722 (7 th Cir. 2018)	Apr/6/18
<i>Thomas v. Berryhill</i> , 881 F.3d 672 (8 th Cir. 2018)	May/16/18
<i>Chavez v. Berryhill</i> , 895 F.3d 962 (7 th Cir. 2018)	Oct/32/18
<i>Biestek v. Berryhill</i> Argument Analysis	Dec/1/18
<i>Stanton v. Commissioner, Social Sec. Admin.</i> , 899 F.3d 555 (8 th Cir. 2018)	Dec/63/18

A Look Back to Our Very First Forum in 1979 at the Outset of Our 40th Year

NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES

SOCIAL SECURITY FORUM

VOLUME 1, NUMBER 1

JULY, 1979

MAJOR CHANGES IN STORE

NEW GOVERNMENT REPRESENTATIVE PROGRAM BEGINS IN 1980

Beginning in early 1980 on an experimental basis, the Social Security Administration will be represented at disability hearings. According to Hal Duncan, coordinator for the Bureau of Hearings and Appeals, the details are not yet completed. The following guidelines are set. The ALJ would preside at an adversary hearing, in which the SSA representative would defend the decision made at the reconsideration level. Both the claimant (or claimant's representative) and the SSA representative would develop their cases and both could present evidence.

Andrew Young, Deputy Commissioner of the Social Security Administration, stated to NOSSCR on June 12, 1979 that a Notice of Proposed Rulemaking will be followed by public hearings in the target areas. The experiment will be conducted early in 1980 in four cities, most probably Phoenix; Roanoke, Virginia; Columbia, S.C.; and a city in the northeast (Boston?). The project will be evaluated after a 9 month trial period. Mr. Young indicated a possibility that the SSA representative would be authorized to "negotiate" cases with the claimant's representative if it is clear to him that the reconsideration determination is in error, thus eliminating the hearing itself. Mr. Young stated that at the present time a Task Force is meeting and discussing the implementation of the program.

As yet unanswered is the role of the SSA representative in the event that the claimant is not represented. A final decision apparently has not yet been made as to whether or not the SSA representative would be an attorney.

NOSSCR will be monitoring this program and invites comments from those members who have a hearing with an SSA representative participating. NOSSCR has contacted several SSA officials with direct responsibility for the program and will continue to report information about it. This experiment will bring dramatic changes to the hearings' procedure and to the regulations, and may well present a serious obstacle to claimants seeking disability and/or SSI benefits.

PRESIDENT'S MESSAGE

In order to fulfill our potential we need maximum effort from all of us to secure new members, to publicize our organization and to become actively involved in our activities.

We are in the process of arranging our first seminar which is tentatively set for New Orleans in October 1979. You will be informed of details as soon as final arrangements are made. We urge all members to make every effort to attend.

SPECIAL THANKS TO: Attorney Nancy G. Shor for agreeing to serve as editor, Attorney Clifford Weisburg for taking charge of the upcoming seminar, Rick Roll, Esquire for his work on the proposed referral program, Attorney Rudolph Patterson and David Vail for their encouragement and assistance in helping get NOSSCR off the ground.

Many members have written and asked what they can do to help. Please consider the following:

- 1) Searching your files for materials that you feel would be helpful to our membership. All members are urged to take time out from their schedules and send this material to NOSSCR.
- 2) Help publicize NOSSCR in your state and assist in recruiting new members.
- 3) Fill out the enclosed questionnaires and return them promptly to NOSSCR.
- 4) Assist in monitoring significant new case law by filing a representative report form in all significant cases in which you are involved.
- 5) **PLAN TO BE AT THE OCTOBER SEMINAR.**

-Steven Babitsky,
President Pro Tem

PENDING LEGISLATION OF INTEREST TO NOSSCR

H.R. 966: ATTORNEYS' FEES IN SSI CLAIMS

H.R. 966

This bill is presently pending in the Public Assistance and Unemployment Compensation Subcommittee. No action has been taken to date.

It was introduced in the House on January 18, 1979. Its aim is to assure payments of attorney's fees in SSI cases. Collection of these fees has become a major problem for the attorney representing SSI claimants, and NOSSCR welcomes efforts to address this issue. The text of the bill follows:

A Bill to amend title XVI of the Social Security Act to provide that attorney's fees allowed in administrative or judicial proceedings under such title, in cases where the claimants are successful, shall be paid by the Secretary of HEW.

Be it enacted by the Senate and House of Representatives of the U.S. in Congress assembled, that (a) section 1631 (d) (2) of the Social Security Act is amended by inserting immediately after the fourth sentence the following new sentences: "Whenever the Secretary, in any claim before him for benefits under this title, makes a determination favorable to the claimant, he shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim; and if as a result of such determination the claimant is entitled to past-due benefits under this title the Secretary shall pay to such attorney (out of any funds appropriated or otherwise made available to him for that purpose) the amount of the attorney's fee so fixed, or the amount agreed upon between the claimant and such attorney as the fee for such attorney's services, whichever is smaller. In the case of any such determination, no fee may be payable for such representation except as provided in this paragraph."

(b) Section 1631 (d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(3) (A) Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney. The court may determine and allow as a part of its judgment a reasonable fee for such representation, and the Secretary shall thereupon pay to such attorney (out of any funds appropriated or otherwise made available to him for that purpose) the amount of the fee so determined and allowed. In any case of any such judgment, no fee may be payable for such representation except as provided in this subparagraph.

"(B) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which subparagraph (A) is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500, or imprisonment for not more than one year, or both."

SEC. 2. The amendments made by the first section of this Act shall apply with respect to determinations made by the Secretary of HEW, and judgments rendered, on or after the date of the enactment of this Act.

H.R. 3236: WORK INCENTIVES, DIS- ABILITY DETERMINATIONS, BENEFIT CAP, PROCEDURAL CHANGES

H.R. 3236

This bill is scheduled to come to the House Floor on June 21, 1979 for debate and vote.

The Administration is seeking the following:

A. Limitation on Total Family Benefits
The proposed limit on benefits would be approximately 80 percent of normal pay for a disabled worker and his family.

B. Work Incentives
In an effort to provide better work incentives for disabled beneficiaries,

the bill would grant a 24 month trial work period, extend Medicare coverage for an additional 36 months for a beneficiary who returns to work, and allow deductions for impairment-related work expenses.

C. Disability Determinations

The bill would authorize the promulgation of federal regulations for use in making disability determinations. States may choose whether or not to continue to administer the determination program under these federal standards, or to turn the administration over to the federal government. The Secretary would be required to review state agency determinations before the payment of benefits and must review at least 15% of allowances in FY 1980, 35% in FY 1981, and 65% in FY 1982 and thereafter.

D. Periodic Review

Each beneficiary's case would be reviewed every 3 years, unless a finding had been made that his disability is permanent.

E. Payment For Existing Medical Evidence

Cost of supplying medical reports would be paid by SSA.

F. Detailed Decision Notices

Claimants would receive a detailed letter explaining a decision instead of the present vague computer-generated form letters.

G. Court Remands

The bill would restrict the Secretary's present absolute discretion to remand cases back to the Appeals Council only when good cause exists. A remand will be permitted only upon a showing that there is new material evidence and that there was good cause for failure to consider it previously.

H. Closed Record

In lieu of permitting the claimant to file new medical evidence concerning a worsening of his condition or a new condition during his appeal, the bill would bar new evidence after an administrative hearing.

The thrust of the bill is apparently an effort to substantially curtail the number of beneficiaries and to reduce the term of their eligibility for benefits.

RECENT 1979 CASES OF INTEREST TO NOSSCR

APPEAL PERIOD

Gilbert v. Califano (D.C.S.C.), 77-431: Claimant who fails to file a court appeal within allotted 60 day period is not entitled to an extension of time for filing.

DISABILITY DETERMINATION

Spicer v. Califano (N.D.N.Y.), No. 77-CV-260, 461 F. Supp. 40:

Remanded on finding that opinion of vocational expert is not substantial evidence of disability because that opinion is unsupported by medical evidence. Remanded on finding that ALJ should have considered combined effect of various ailments.

Lindberg v. Califano (N.D.Cal.), No. C-78-1878:

Claimant had burden of showing that he could no longer perform his occupation of 30 years as a cement finisher, and did not have a burden to show that he could no longer perform occupations which he had 40 to 50 years before.

Ortiz v. Sec'y of HEW (E.D.N.Y.), No. 78 C860:

Case remanded for hearing examiner to consider the numerous factors set forth in the grid regulations of 2/26/79 in addition to medical condition.

Boyer v. Califano (C.A. 8), No. 78-1785:

ALJ's finding of non-disability was not supported by substantial evidence; ALJ did not specify which of claimant's previous occupations she would be capable of performing given her medical condition.

Lawrence v. Califano (E.D.Mo.), No. 78-741C:

ALJ's finding of non-disability was not supported by substantial evidence. Disability due to thrombophlebitis condition.

Allen v. Califano No. H-78-535 (M.D. District Court)
Attorney Luthur Blackiston informs NOSSCR that a favorable settlement is pending in the above class action suit. Mrs. Allen sought reversal of her denial of her Social Security Income Claim. The class that was sought to be certified was for all persons who received denials for Social Security Income, who are over age 45, who cannot do their previous work and who have not had

DELAY

Santiago v. Sec'y of HEW (D.C.P.R.), No. 77-828:

Judgment for disability claimants due to repeated failure of Secretary of HEW to respond to the court's timetables and extensions of time for filing of briefs.

JURISDICTION

Carney v. Califano (C.A. 8), No. 78-1790:

Secretary's final decision not to reopen a claim for benefits made after a hearing is not reviewable by the district court for lack of jurisdiction.

LACK OF COUNSEL

Chapman v. Califano (E.D. Texas), No. P-76-40CA:

The magistrate's report found that the ALJ had breached his duty towards an unrepresented claimant. The ALJ asked 9 questions at the 7 minute hearing on issue of survivorship benefits. Remanded.

Pinkowski v. Califano (E.D. Wisc.), C-4, 78:

Remanded upon a showing that claimant, with a fifth grade education, proceeded at her hearing without counsel and exhibited difficulty in comprehending the hearing. She was not told orally of her right to representation.

Stawls v. Califano (C.A. 4), No. 77-2108:

Remanded to allow claimant's attorney to furnish evidence, after a finding that, due to her psychiatric disability, claimant was unable to have realized the need for counsel.

OVERPAYMENT

Starks v. Califano (E.D. Ill.), No. CV77-2119-B:

Where claimant understood the offset provisions for workman's compensation

UPDATE ON GRID SUITS

the criteria set out in the secretary's proposed "Rules for Adjudicating Disability Claims in Which Locational Factors Must be Considered" applied to their claims.

Attorney Blackiston stated that a class was certified nationwide and that both Social Security Income and Title II claimants will be getting full relief. Notices are to be mailed shortly.

Details of the settlement and pleadings will be forwarded to NOSSCR and

benefits and had reported his w/c settlement to SSA, he still had an obligation to notify again when his benefit checks were not reduced.

Green v. Califano (D.W. Va.), No. 77-0053:

Recovery of overpayment waived due to claimant's age, intelligence, physical and mental impairments, and due to the fact that his expenses exceed income.

Burns v. Califano (D. Minn.), CA 4-78-108:

Blindness is not an excuse for failure to report return to work, in light of claimant's high intelligence level.

PSYCHIATRIC DISABILITY

Stawls v. Califano (C.A. 4), No. 77-2108:

Remanded for specific findings. An expert's opinion as to the progressive nature of schizophrenia and claimant's evidence that she was disabled at a point following the expiration of her insured status were relevant to determination of issue of her disability during insured status.

REFUSAL TO UNDERGO SURGERY

Blankenship v. Califano (C.A. 6), No. 77-1536:

Claimant is not denied benefits for refusing to undergo spinal surgery which entailed 50/50 risk of worsening his condition. Claimant has already undergone a myelogram.

RES JUDICATA

Harapat v. Califano (C.A. 8), No. 78-1793:

ALJ dismissed application on grounds of res judicata. This dismissal was not reviewable by the district court because it was not a final decision of the Secretary following a hearing.

available to members.

Holter v. Califano No. C79-55T (Western District of Washington)

Attorney David Vail informs NOSSCR that this case has been dismissed for jurisdictional reasons. The constitutionality of the "Grids" was not passed upon.

Attorney Vail did obtain a favorable decision for Mr. Holter from the hearings examiner.

NEWS

UPCOMING SEMINAR

Member Cliff Weisburg of Southfield, Michigan, is the Seminar Coordinator. Our target is a meeting in New Orleans in October.

Information concerning the schedule, topics, and registration will be mailed shortly.

SUMMER LAW CLERK

Susan Cosgriff, a third year student from Wyoming University Law School, is the NOSSCR summer law clerk. Ms. Cosgriff is researching areas in the Social Security Law of importance to NOSSCR members. If you have a suggested topic, please inform us. Copies of Ms. Cosgriff's research will be available for you to order.

CONTRIBUTIONS

Submission of article ideas for NOSSCR FORUM is encouraged. Please send material to the Contributions Editor, 222 Main St., Falmouth, MA 02540. Thank you,
-Nancy Shor,
Editor

**LATE BULLETIN
BENEFIT OVERPAYMENTS**
The United States Supreme Court held that recipients of various Social Security benefits must be given a hearing, if they request one, in writing, before the government can reduce their benefits in order to recoup the overpayment.
California v. Tambores, No. 77-1511
Copy of decision available from NOSSCR, Form 0425.

ENCLOSURES

Contained within this issue of FORUM are several enclosures to which we would appreciate your response.

1. List of Available Materials

Our resource bank of materials is growing. Please review your files and send to us any material which you feel may be of interest to the membership.

2. Representative's Report Form

In an effort to pinpoint significant cases which may be overlooked in the reporting services, we are distributing this form for your use in reporting on interesting and important cases which you have handled or are aware of. Other members may benefit by your experience and commentary.

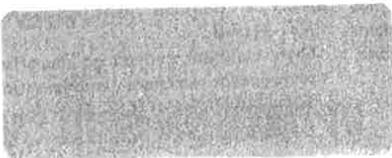
3. Attorneys' Fee Questionnaire

We are compiling data and comments on the subject of attorneys' fees in Social Security cases and would appreciate your help.

4. Referral Service Questionnaire

We have been contacted by private attorneys and legal service organizations with reference to creating a referral network, and we would appreciate your comments.

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY
CLAIMANTS' REPRESENTATIVES**
222 Main Street
Falmouth, Massachusetts 02540
(617) 540-1606



NOSSCR Timeline: 1979-1983

In the months leading up to NOSSCR's 40th anniversary conference in New Orleans, the *NOSSCR Forum* will be taking a look back in time, each month focusing on a few years in NOSSCR's—and Social Security's—history.

1979

- NOSSCR begins operation in Falmouth, Mass.
- Steven Babitsky is NOSSCR's President Pro Tem. Nancy G. Shor is NOSSCR's Executive Director.
- NOSSCR publishes the first "Social Security Forum" in July.
- NOSSCR's first conference is held in New Orleans in October.

1980

- Annual dues for 1980 NOSSCR membership are \$50.00.
- NOSSCR begins the lawyer referral service.
- The national NOSSCR offices moves to New York.
- NOSSCR has state chairpersons.
- NOSSCR meets with SSA officials about concerns with delays in attorneys' fee payments. SSA's Office of Hearings and Appeals processed 48,982 fee petitions in 1980. The average fee requested was \$1,175.31 and the average fee authorized was \$1,049.37.
- On June 13 and December 19, the Department of Health and Human Services publishes in the Federal Register SSA's "significant regulations under development" including one to "provide time frames for the holding of hearings, issuance of decisions and Appeals Council reviews."
- SSA increases the number of Continuing Disability Reviews.

1981

- NOSSCR's conferences are held in Boston (250 attendees) and Atlanta, GA.
- Rudolph Patterson of Macon, Georgia becomes NOSSCR's President.
- National Commission on Social Security endorses concept of a Social Security Court.
- Dan Rostenkowski (D-IL) becomes chairman of the House Ways and Means Committee and Rep J.J. Pickle (D-TX) returns as Chairman of the House Social Security Subcommittee.

1982

- NOSSCR begins publication of Social Security Practice Guide.
- NOSSCR receives status as a tax-exempt organization under 501c(6).
- SSA seeks legislation to eliminate fee authorization and withholding in SSA cases out of fear that withholding encourages representation of an otherwise "neutral" system.
- SSA pushes to make POMS binding on ALJs.
- NOSSCR has 187 sustaining members (many continue to be sustaining members today, and we thank you!)

1983

- The Executive Committee of NOSSCR held its organizational meeting on June 8. Committee members present were Rudolph Patterson, Clifford Weisberg, Steven Horenstein, Lyle Lieberman, Charles Hall, Richard Feinstein and Steven Babitsky. Also present were Nancy Shor, Kathleen Morrison, and Frederick Krebs.
- NOSSCR files its Articles of Incorporation as a DC 501c (6) corporation.
- Clifford Weisberg of Southfield, Michigan becomes NOSSCR President.
- The Senate's Subcommittee on Oversight of Government Management holds hearings on CDRs and ALJs' independence and issues a bipartisan report that concludes, "SSA is pressuring its ALJs to reduce the rate at which they allow disabled persons to participate in or continue to participate in the Social Security Disability program."
- Litigation continues about terminations and the medical improvement standard.

Selected Cases

VOCATIONAL EXPERT TESTIMONY

Washington v. Com'r of Social Sec., 906 F.3d 1353 (11th Cir. 2018)

Social Security Ruling (SSR) 00-4p imposes an affirmative duty on ALJs to identify and resolve apparent conflicts between a vocational expert's (VE's) testimony and the Dictionary of Occupational Titles (DOT), which "is not fulfilled simply by taking the VE at his word that his testimony comports with the DOT when the record reveals an apparent conflict between the VE's testimony and the DOT." SSR 00-4p "places the burden squarely on the ALJ to determine whether there are any conflicts... [and] the Ruling does not cabin this duty with any language suggesting that it is limited to conflicts the ALJ is put on notice of by the claimant or by the VE." Instead, the Ruling states that the ALJ "must explain the resolution of the conflict irrespective of how the conflict was identified."

Thus, an "apparent conflict" is more than a conflict that is made apparent by the express testimony of the VE; "It is a conflict that is reasonably ascertainable or evident from a review of the DOT and the VE's testimony... Since the ALJs frequently use the DOT, treat it as an authoritative source [that they must take administrative notice of], and actively investigate the evidence for and against granting disability benefits, identifying these 'apparent conflicts' falls well within their wheelhouse."

Here, in response to the ALJ's hypothetical asking whether there were any jobs that could be performed with only "occasional fingering," the VE testified that work as a bagger (DOT code: 920.687-018) and a table worker (DOT code: 734.687-014) would be available. However, a review of the DOT's descriptions of these jobs shows that both require a minimum of "frequent fingering." Even though the VE expressly denied any conflict between his testimony and the DOT when asked by the ALJ, and neither the claimant nor his representative raised this conflict at the hearing, the ALJ breached his duty to fully develop the record by failing to identify and resolve this "apparent – indeed glaring – conflict." Therefore, the district court's decision affirming the ALJ's denial of benefits is reversed and the case is remanded for further proceedings.

REMAND v. REVERSAL

Brooks v. Berryhill, 321 F.Supp.3d 958 (S.D.Iowa 2018)

The ALJ erred by failing to afford controlling weight to the opinion of the claimant's treating psychologist. Under Eighth Circuit precedent, the ALJ must give controlling weight to an opinion when (1) the opinion is from a treating source; (2) the opinion is a medical opinion about the nature and severity of the claimant's impairments; (3) there is some reasonable, medically acceptable support for the opinion; and (4) the opinion is not contradicted by any other substantial evidence of record. "When all of these factors are met, the adjudicator **must** adopt a treating source's medical opinion irrespective of any finding he or she would have made in the absence of the medical opinion."

Here, (1) the opinion was from the claimant's treating psychologist, an acceptable medical source under SSA's regulations; (2) the doctor opined on the nature and severity of the claimant's mental impairments, specifically opining that the claimant's symptoms are persistent and significant and that she is markedly limited in several significant areas of functioning; (3) there is no evidence to suggest, nor did the ALJ find, that the opinion was not well-supported by medically acceptable clinical and laboratory diagnostic techniques; and (4) there is no substantial evidence in the case record that is inconsistent with the doctor's opinion. Therefore, it was error for the ALJ to not give controlling weight to the treating psychologist's medical opinion. Because the record overwhelmingly supports a finding of disability and further proceedings would only delay the receipt of benefits that the claimant is clearly entitled to, this case is reversed and remanded solely for an immediate award of benefits.

UNEMPLOYMENT COMPENSATION

Lambert v. Berryhill, 896 F.3d 768 (7th Cir. 2018)

The ALJ's adverse credibility determination rested on an improper analysis of the claimant's receipt of unemployment benefits. "[A] claimant's desire to work is not evidence that the claimant has embellished his limitations, especially here, where [the claimant's] hopeful view of his prognosis was not shared by his doctors, who repeatedly urged him to shift from seeking a cure to focusing on pain

continued on page 34

Available Materials

No. 2201, Vocational Expert Testimony

At an ALJ hearing, a VE testified that an individual limited to occasional handling, fingering, and feeling with the dominant hand could perform the jobs of a table worker, final assembler, and bonder. This conflicts with the DOT, which says these jobs all require frequent handling and fingering. The ALJ had asked the VE to indicate when any of his testimony contradicted the DOT and the VE did not do so in his response to the question. The ALJ did not ask further questions about a potential DOT conflict and wrote in the unfavorable decision that the VE's testimony "is consistent with information contained" in the DOT.

The Court said the Commissioner's argument that the VE's testimony does not conflict with the DOT "is not well taken." Unlike the VE's response to questions about a sit-stand option, which is not discussed in the DOT, handling and fingering are addressed in the DOT, in a way that directly contradicts the VE's testimony.

Therefore, the District Court reversed and remanded for further proceedings. The plaintiff was represented by Margolius Margolius and Associates LPA of Cleveland, Ohio.

No. 2202, Headaches

The claimant's treating physician completed a questionnaire in 2013 indicating the claimant experienced day-long migraines two to three times per week and needed to lie in a quiet room for six to eight hours each time. The doctor opined that the claimant would require unscheduled breaks throughout a workday and would miss more than four days of work each month due to his impairments. The ALJ gave this opinion "very little weight" because the frequency and severity of the migraines were not "supported by the record." The ALJ cited medical records from 2010 and 2015 in support of this finding, but the court notes that these shed little light on the claimant's condition in 2013 and include vague descriptors like the headaches being "better."

Additionally, even if the ALJ finds the treating source's opinions not entitled to controlling weight, the ALJ should have gone through the checklist in

20 C.F.R. 404.1527(c) to determine what weight the opinion deserved.

Given the ALJ's error here, in evaluating the opinion of the claimant's treating psychiatrist about his mental impairments, and in evaluating the claimant's testimony in light of SSR 16-3p, the claim was remanded for further proceedings.

The plaintiff was represented by John E. Horn of Tinley Park, Illinois.

No. 2201, *Dawson v. Berryhill*, Case No. 1:17-cv-02090 (N.D. Ohio, E.Div.) (November 26, 2018).

No. 2202, *Costa v. Berryhill*, No. 17 CV 5068 (N.D. Ill., E.Div.) (December 18, 2018).

Do you have a successful case you would like to share with readers of the NOSSCR Forum? Available Materials includes ALJ, Appeals Council, and federal court decisions. Representatives can also submit their briefs along with the favorable decisions if they choose. Inclusion in Available Materials helps members who may have similar cases, and is an excellent way to publicize your victories!

Please send submissions to Stacy.Cloyd@nosscr.org, making sure to redact the claimant's personally identifiable information from all materials (the claimant's name can remain in the case caption of federal court cases).

To order available materials, visit bit.ly/nosscrstore.

Welcome to Our New Members

Welcome to all the new members who joined NOSSCR in December 2018 and January 2019!

SUSTAINING

Faye A. Schofield, Esq.
Highland Home, AL

REGULAR

Virginia Hales Anderson
Hattiesburg, MS

Igor Borojevic, Esq.
Gretna, LA

Daniel A. Bronk, Esq.
Rochester, NY

Gary S. Brown, Esq.
Charlotte, NC

Joseph Chicoine, Esq.
Rensselaer, NY

Lisa Clark, Esq.
Cincinnati, OH

Jonathan W. Cole, Esq.
Oak Lawn, IL

Stacy J. Crider, Esq.
Indianapolis, IN

Stephanie M. Driscoll, Esq.
Tustin, CA

Bradley C. Gerlach, Esq.
Palatine, IL

Melissa M. Green, Esq.
New Castle, DE

Andrea R. Healey, Esq.
Warren, MI

Tony Hoyle, Esq.
Brooklyn, NY

Linnea J. Levine, Esq.
Westport, CT

Vincent A. Marzal, Esq.
Chicago, IL

Susan Ritacca, Esq.
Chicago, IL

Veronica L. Robinson, Esq.
Lauderhill, FL

Bruce Adam Sagan, Esq.
Fort Lauderdale, FL

Anderson Serrano, Esq.
Manati, PR

Praven Shenoy, Esq.
Brockton, MA

Mark Somers, Esq.
Rochester, NY

Michael H. Stauder, Esq.
Jupiter, FL

Amberlee Sutton, Esq.
Novatp, CA

Amber D. Thomas, Esq.
Warren, MI

LAW STUDENT

Maryann Briseno
Menifee, CA

Selected Cases continued from page 32

management. And although unemployment benefits may be relevant if a claimant has represented to the state that he is able to work during the period for which he has applied for federal disability benefits, any work-ready representation that [the claimant] made, personally or by presumption under state law, occurred before the amended onset date.” Notably, “the Social Security system is designed to encourage everyone who can work to do so... And a person who is not certain whether he will qualify for Social Security disability surely has, and should have, a strong incentive to keep looking for work and to pursue unemployment compensation as an interim source of income. An ALJ should not discount a claimant’s credibility based on an application for unemployment compensation without taking these incentives and pressures into account.” Therefore, the judgment upholding the ALJ’s denial of benefits is reversed and the case is remanded for further proceedings.

NOSSCR AWARDS & SCHOLARSHIP

National Organization of Social Security Claimants' Representatives

NOSSCR is pleased to present two awards and a scholarship recognizing the contributions of exceptional advocates for people with disabilities.

AWARDS

Award nominations for these two awards must be made by a NOSSCR member, but the award recipient need not be a NOSSCR member. Nominations may be sent by providing the information requested at www.nosscr.org/nominations. Additional information may be requested.

EILEEN P. SWEENEY DISTINGUISHED SERVICE AWARD

NOSSCR presents the Eileen P. Sweeney Distinguished Service Award to individuals whose outstanding service has resulted in a significant improvement in the quality and availability of advocacy for Social Security claimants, or improvements in the Social Security adjudicatory process. Eileen P. Sweeney was a nationally recognized expert on issues affecting people with disabilities who receive federal welfare benefits. With this award, we honor her exemplary character and career. For more information about Eileen and to view a list of past recipients, please visit www.nosscr.org/awards.

NANCY G. SHOR LEADERSHIP AWARD

The Nancy G. Shor Leadership Award, named in honor of NOSSCR's founder and first Executive Director, will be awarded to an individual or organization whose work and actions have gone "above and beyond," showing exceptional leadership greatly benefiting NOSSCR or its constituents. With this award we honor Nancy's vision, leadership and dedication that established NOSSCR as the pre-eminent organization advocating on behalf of Social Security representatives, claimants and beneficiaries. For more information about Nancy and this award and to view a list of past recipients, please visit www.nosscr.org/awards.

SCHOLARSHIP

RUDOLPH PATTERSON SCHOLARSHIP

The Rudolph Patterson Scholarship is named in memory of founding NOSSCR member and past President Rudolph Patterson of Macon, Georgia. Recognizing Rudolph's commitment to both NOSSCR and the importance of ongoing training and learning, preference for this scholarship will be given to NOSSCR members with financial need to attend a NOSSCR conference, including, but not limited to, attorneys in legal services, clinics, solo firms and newly admitted attorneys. Applicants for the Rudolph Patterson Scholarship award should complete the form found at www.nosscr.org/awards. Contributions to the Rudolph Patterson Scholarship are gratefully accepted. Please send a check to NOSSCR payable to NOSSCR, indicating that it is a donation for this scholarship.

SAVE THE DATES

Mark your calendar with NOSSCR's events in 2019.



Supreme Court Admission Day

Washington D.C. // June 17

Don't miss this special opportunity, with limited availability, to be admitted to the Supreme Court Bar! The day includes a continental breakfast, swearing-in ceremony, group photo, and a courtroom lecture.

Medical Mini-Conference & Hill Day

Washington D.C. // June 17-19

Join us for several CLE-eligible sessions focusing on medical issues in Social Security claims. Afterwards, take part in a unique opportunity to visit representatives on the Hill with NOSSCR staff and members.

40th Anniversary Conference

New Orleans, LA // Hyatt Regency New Orleans // September 11-14

Join us for this special anniversary conference! Celebrate 40 years at a special reception, earn your CLEs, network, and more.

NOSSCR

www.nosscr.org/events