

October 2, 2020

John Lee  
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Dear Mr. Lee,

Thank you for arranging our recent conference call on Thursday, September 17, 2020. We were happy to hear that SSI Non Disability (SSI ND) cases, as well as other paper cases, are being converted by the Field Offices and by OHO and that the converted cases are going to be adjudicated by OHO. Unfortunately we have not been given any written information as to how and when these shifts in policy and procedure will be implemented. We also have not received any specific data in writing about the number and location of these cases, a fact that we find concerning since the numbers we have been told have varied from call to call.

Overall we remain particularly concerned about the treatment of SSI ND cases given the specific deadline of 90 days in the Act, 42 U.S.C. 1383(c)(B)(ii)(2). This deadline reflects the importance of resolving potential disputes promptly for a group that are, by definition impoverished and facing brutal need. The failure to address these hearing requests in a timely fashion is a major, ongoing injustice that must be addressed

Below are the particulars of our current recommendations in response to the inadequate agency response after many months of presenting this issue and engaging in mutual discussions:

1. **Give SSI ND cases priority for hearings beyond date of filing given the special 90 day deadline.** Given the fact that virtually all these cases are beyond the 90 day deadline they should not be treated along with other cases of the same age which do not face a deadline. We know and indeed represent people with other issues such as disability applications but the SSI ND cases should be afforded a priority. We would like to see a written, publicly available policy to reflect this need so that we all can discuss the nature of this priority.
2. **Need to search FO for all NDs seems extremely unlikely:** We were previously told there was a large number of ND cases in FOs. Now we are told that the 1230 Field Offices only have 742 ND cases nationwide, less than one per FO. Given the likelihood that cases may have been misplaced or gone awry we urge you to adopt instructions to encouraging staff to search for such cases and to report back on the success of this activity.

3. **Once all FO and OHO cases are identified, an effort needs to be made to contact these individuals and their representatives, when applicable. Given the shutdown in mid-March, most, if not all, of these cases are more than 300+ days old.** Some of those affected won't even recall that they filed a request for ALJ hearing, or what the issue they appealed was. Again, we have no knowledge as to how SSA plans to recontact this group or whether any effort will be made to do so, despite the likelihood of eviction, foreclosure, homelessness or loss of telephone service. SSA needs to establish additional, effective ways to search for the SSI ND group given the likelihood of changes in living arrangements, phones and computer access.
4. **We need to see the instructions for implementing the change in policy at all levels:** We have been denied access to these instructions, which reflects a lack of transparency in these discussions and makes it very difficult to make suggestions. Questions of priority and location of the FO cases discussed above cannot even be addressed without knowledge of what policies and procedures exist. We should not have to wait for a FOIA request or be compelled to litigate and seek discovery to determine whether how well SSA's new procedures will address the problem we have raised.
5. **We also need data showing the number of cases at each FO and OHO and the progress that is being made to deal with this group:** This is data that SSA has and should be shared so that we all can identify problem spots.
6. **Locating people in these cases are more than 300+ days old for a group that is poor, aged and or disabled.** SSA needs to establish additional, effective ways to search for the SSI ND group given the likelihood of changes in living arrangements, phones and computer access or they will join the dismissal statistics of OHO.

**OHO lack of steps to resolve cases rather than going right to a hearing:** We have long advocated quicker and efficient resolutions and have been refused to date. Given the fact that almost all of these cases will be 300 or more days old it makes sense to contact people and discuss whether additional evidence is available or circumstances have changed. These contacts are already part of the CARES program to reduce the backlog and it is odd that that approach is not being discussed here. Offering pre hearing conferences is also a tactic that should also be considered.

7. **Develop a Dear Colleague letter and a new policy statement for the SSA web site about SSA's new policy for paper cases. In addition develop a special page to be inserted in hearing notices and other communications to explain the treatment that will be afforded the ND and paper case groups.** Rarely, if ever, has SSA adopted a policy that said that an entire group of cases would not be able to have their cases adjudicated. Of course, the extraordinary challenge posed by COVID 19 required doing

business in a new way and SSA did explain the reason for this unique measure. Now, however, the change of that policy is equally important to announce and advise those who were adversely affected. Just like the need to explain telephone hearings and video hearings, this group should get special notices to address their special situations.

8. **Advise ND cases of the priority treatment for dire need (e.g. homelessness), critical cases and other priorities:** This would be an important measure to address the long delays involved and to make known these otherwise invisible policies.
  
9. **Extend interim assistance for cases beyond 90 days (already awarded in New York *Sharpe* case).** We urge the agency to apply the *Sharpe* decision nation-wide.

We look forward to hear from you in the very near future. I would appreciate your forwarding this letter to the CC's since I do not have their email addresses.

Very truly yours,

*Richard Weishaupt*

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