



January 18, 2024

Commissioner Martin O'Malley  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235  
*Via Email*

Dear Commissioner O'Malley:

The Consortium of Constituents with Disabilities (CCD) Social Security Task Force (SSTF), congratulates you on your confirmation as the Commissioner of Social Security!

CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. Our Social Security Task Force focuses on disability policy issues in the Title II Social Security Disability Income (SSDI) program and the Title XVI Supplemental Security Income (SSI) program.

Broadly, it is our mission to advocate that SSA's administrative budget be adequately funded so that SSA has sufficient resources to provide the high-quality customer service that our constituents deserve, to ensure that all SSA policy proposals consider the impact on people with disabilities, to advocate for legislation and policy changes that expand, but never cut benefits, and prioritizing minimizing the administrative burden on beneficiaries, claimants and members of the public.

We use our collective expertise to offer recommendations on a wide range of legislative and administrative issues impacting people with disabilities (many of them outlined here: [https://www.c-c-d.org/rubriques.php?rub=taskforce.php&id\\_task=12](https://www.c-c-d.org/rubriques.php?rub=taskforce.php&id_task=12)), and would be happy to discuss any of these issues. Below we are highlighting several key policy priorities for 2024 that SSA has administrative authority to accomplish.

#### **I. Publish Final Regulations.**

The Task Force enthusiastically endorsed four of SSA's Notices of Proposed Rulemaking in 2023, and we encourage SSA to publish them as soon as practicable:

- Omitting Food from In-Kind Support and Maintenance (Docket No. SSA-2021-0014);
- Expansion of the Rental Subsidy for SSI Applicants and Recipients (Docket No. SSA-2023-0010); and

- Expand the Definition of a Public Assistance Household (Docket No. SSA-2023-0015)
- “Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work” (Docket No. SSA-2023-0024).

See CCD-SSTF comments attached. These regulations will make the SSI (and in some cases SSDI) program easier to administer and less onerous for claimants and beneficiaries. We further recommend that the logic of these regulations be applied to other areas. For example, if the proposal to use the receipt of SNAP as a proxy for establishing financial eligibility and hardship is accepted in the in-kind support and maintenance context, we hope similar thinking could be applied to making it easier for claimants to be found financially eligible for overpayment waiver relief (i.e., that recoupment is against the purposes of the act), without having to submit proof of income and expenses.

## II. Enact Administrative Reforms to Reduce DDS Backlog.

As you know, despite a decrease in the overall volume of Social Security disability claims, the average initial-stage processing times has increased substantially, causing a huge backlog of cases to be pending at SSA’s Disability Determination Services (DDS). CCD SSTF provided a detailed list of policy proposals that SSA could implement to improve this problem at House Ways and Means Hearing on October 23, 2023, and continue to endorse those recommendations.<sup>1</sup> We’d like to lift up a few proposals that SSA could implement today—using existing authority, appropriations and staffing to accelerate the processing time of initial claims:

### A. Eliminate the Reconsideration Level of Review.

SSA should use its administrative authority to eliminate reconsideration review, the current second-level review by DDSs, so that DDSs only review a claim one time. Reconsideration is not required by the Social Security Act for disability determinations, and this level of review is an administrative practice that could be changed through regulations. Reconsideration, in which DDSs approve only ten to fifteen percent of cases, is widely viewed as an inefficient “rubber stamp” of the first denial. A Congressional Research Service report documented fifty years of SSA’s efforts testing ways to improve the reconsideration; among its key findings, the report documented a twenty-year SSA pilot, which was ended by the Trump Administration, in which reconsideration was eliminated in certain states. The report did not find any negative implications for SSA’s operations or accuracy in evaluating claims in states that did not have reconsideration review.<sup>2</sup>

---

<sup>1</sup> Testimony of Jennifer Burdick on behalf of CCD-SSTF at House Ways and Means Hearing (Oct. 23, 2023), *available at*, <https://gop-waysandmeans.house.gov/event/social-security-subcommittee-hearing-on-one-million-claims-and-growing-improving-social-securitys-disability-adjudication-process/>.

<sup>2</sup> Cong. Research Serv., *The Reconsideration Level of Social Security’s Administration Appeals’ Process: Overview, Historical Development, and Demonstration Projects* (RL 7-9453), Prepared by William Morton, July 15, 2018. (“Most reconsiderations of initial application determinations are subject to a *case review* only, which involves a review of all the evidence in the claims file by an examiner who was not part of the initial determination. Case review does not involve a face-to-face meeting between the claimant and the adjudicator”);(emphasis added);

Forcing applicants to go through reconsideration significantly lengthens how long they wait for a decision, and uses up DDS resources, including DDS staff time and attention. This level of review is also confusing for many, and many claimants give up on meritorious claims rather than continue through the appeals process. There is also a significant variance in award rates at the reconsideration level across the country, which implies that this level of review is not uniform. Considering the significant understaffing issues at DDSs across the country, eliminating this rightly criticized second level of review would free up DDS staff, and allow the DDSs to focus its resources on promptly and accurately evaluating initial applications.

**B. Minimize DDS Backlogs by Streamlining Evidence Collection to More Effectively Target Treating Source Evidence.**

It's common sense that a person's treating doctor is in the best position to accurately assess whether someone is experiencing physical or mental limitations that would make it difficult to work. Treating doctors have the best grasp of their patients' medical history and have often seen patients multiple times. All too often, instead of reviewing treating-source evidence, DDS adjudicators overly rely on reports from SSA consultative examiners (CE) who meet claimants on one occasion evaluate their disability, even when more probative treating-source evidence might be available.

Over reliance on CE examinations is bad practice. CE reports are an inefficient way to obtain the evidence necessary to make an accurate decision as early as possible, because they are time limited and decontextualized from the applicants' full medical history. Referring claimants for unnecessary CE examinations is also contributing to the DDS backlog. Due to many of the same hiring constraints affecting SSA's staffing, there are also serious CE scheduling backlogs in many states so CEs can delay timely evaluation of applicants' claims. When DDS examiners rely on this poor-quality evidence in their decisions, they make mistakes, which lead to unnecessary requests for reconsideration and subsequent appeals, as well as reapplications. These errors create more downstream work that adds to the DDS backlog. Focusing instead on treating source opinions from appropriate specialists would allow DDS examiners to get to the right conclusion sooner.

- **Make it easier for DDSs to get treating source opinions by sending applicants the forms to take to their medical providers directly.** While many treating providers are unwilling or unable to serve as consultative doctors for DDSs, many *would* be willing to complete assessments as part of routine medical appointments. If DDS examiners sent assessment forms directly to applicants, the applicants could take them to their upcoming appointments and ask their medical providers to complete them. The POMS already contemplates DDS requesting claimants' assistance in gathering evidence, so it would be easy to build out this policy to direct DDS staff to send claimants assessment forms to bring their treating doctors. *See* POMS DI 22505.006(B)(2).
- **Restore the treating-physician rule.** This rule was an important time-saving tool for adjudicators before it was eliminated by SSA regulation in March 2017. The treating physician rule helped DDS examiners adjudicate claims more efficiently and

effectively by guiding examiners to focus on this probative evidence, helping them get the right result faster. Right now, DDS examiners can rely on CE reports in lieu of treating-source evidence, which leads to mistakes and appeals. The Task Force believes it would decrease the DDS backlog by requiring DDS examiners to focus claim development on the most probative evidence.

- **Institute a feedback loop for claimants to contact SSA about problematic CEs.** While CEs can provide necessary assessments for claimants with little treatment history, these reports are of such exceedingly low quality that advocates have had to sue them for fraud.<sup>3</sup> SSA has surprisingly little oversight over the consulting doctors who examine claimants at DDSs' behest because they are secured by DDSs via third-party contracts, and CE oversight is inconsistent across states. SSA should create a feedback loop, perhaps by requiring publication of a unique 1-800 telephone number on CE scheduling notices (*see* POMS DI 22510.016), designed to allow claimants to leave feedback on CE quality and other issues that goes directly to SSA. This would help ensure DDS's have high-quality CE evidence to refer to, which may increase the speed and accuracy of decision making.

### III. Overpayments

The media has recently noticed what has long been plain to disability recipients: SSA's current process to notify and collect on overpayments is opaque, inefficient, and harms claimants by forcing them to live with reduced or no disability benefits, sometimes years<sup>4</sup> after the overpayment happened. This can also negatively impact their credit scores. SSA has broad authority to both waive overpayments and make recoupment less onerous. The CCD-SSTF encourages SSA to consider revamping the overpayment process in the October 17, 2023 memo provided by the national advocates including CCD SSTF members Jennifer Burdick, Kate Lang and Kathleen Romig (attached).

We'd further recommend SSA use its current statutory authority to ameliorate the burden caused by overpayments by taking the following steps:

- a. Prevent unnecessary overpayments by providing information to claimants about ABLER Accounts.** Excess resources are one of the leading causes of overpayments for those receiving SSI. Many overpayments are completely preventable if people open ABLER accounts, where claimants can hold 50 times more savings—up to \$100,000 which do not count towards the resource limit—though less than 1 percent do. SSA should take steps to encourage more people to take advantage of ABLER accounts by discussing it with claimants at Pre-effectuation Review Contact (PERC) meetings.

---

<sup>3</sup> Rich Sugg, *Attorney for disability claimants say his clients were denied payments due to fraudulent exams*, The Kansas City Star (Oct. 2, 2022), <https://www.kansascity.com/news/local/article266562321.html>.

<sup>4</sup> Claire Brown, *When Social Security Becomes a Debt Collector* NYT (Dec. 23, 2023) [https://www.nytimes.com/2023/12/23/business/social-security-overpayment-debt.html?unlocked\\_article\\_code=1.IE0.5j-j.hjx2xyHoUJwQ&smid=nytcore-ios-share&referringSource=articleShare](https://www.nytimes.com/2023/12/23/business/social-security-overpayment-debt.html?unlocked_article_code=1.IE0.5j-j.hjx2xyHoUJwQ&smid=nytcore-ios-share&referringSource=articleShare)

**b. Prevent unnecessary overpayments by better informing SSI beneficiaries about resources that are excluded.** Many overpayments are based on excess resources that can be successfully excluded if people knew the money they had saved was excludable. For example, federal tax refunds are excluded from being counted as a resource for 12 months and Pandemic-related Economic Impact Payments (EIPs) are excluded indefinitely, but people do not know to challenge overpayments on these bases. SSA should provide beneficiaries with a clear explanation of common exclusions and a process of how to show the portion of the money in the account which was an excluded resource. This could easily be achieved by amending POMS SI 02220.010 and would not require an amendment of the Social Security regulations, *See* 20 C.F.R. § 416.558.

**c. Increase Accessibility and Uniformity to Overpayment Waiver Relief By Directing Waiver Relief in Common Scenarios.** Overpayments, waiver, and collection policies are needlessly complicated. SSA has broad authority to waive overpayments where the claimant acted in good faith and recovery defeats the purpose of the act, but existing policies emphasize collecting detailed information and weighting numerous factors to make these determinations. SSA could easily promote uniformity and lessen these bogged down workloads by directing findings in common scenarios.

- Presume individuals are without fault when SSA is seeking collection on an overpayment which occurred more than three years ago. When SSA seeks to collect on overpayments incurred more than three years ago, it puts beneficiaries in the impossible position of needing to recall actions they took regarding reporting information to SSA years ago. This includes many individuals who did submit timely reports and SSA failed to act. Unless there is obvious evidence the beneficiary intentionally withheld information, SSA should amend POMS to direct that people should be presumed to be without fault when the overpayments occurred long ago.
- Presume individuals are without fault when they are overpaid due to continued receipt of SSI while they were temporarily institutionalized for three months or less. People overpaid in this situation should be presumed to be in a medical crisis precluding timely reporting to SSA. Recent changes to POMS SI 022060.010(b)(2)(f) address this situation but do not go far enough.
- Enforce and strengthen presumption that individuals are without fault for overpayments caused by statutory benefit continuation. People should be able to easily get waiver relief when they were overpaid only because they availed their due process protections to receive continued benefits while they unsuccessfully appeal the termination of those benefits. Current POMs instruct SSA to assume that someone is without fault in these situations (POMS SI 02260.007), though SSA often fails or refuses to apply this presumption. SSA could and should automate finding of no fault on waivers in this scenario, by using information in

its own system to direct a finding of “without fault” where claimants attended their hearings, and there is no evidence of intentional fraud.

- Presume it defeats the purpose of the act to recover overpayments from those receiving “public assistance” and/or extra help with Medicare Part D. After individuals establish they are without fault for an overpayment, SSA undertakes detailed investigations to determine whether recoupment defeats the purpose of the act or is against equity and good conscience. The thrust of this assessment is whether the claimant can afford to repay the overpayment, and SSA policies currently require claimants to furnish and SSA staff to review countless financial documents to make this determination. SSA could substantially simplify this process by amending the POMS to indicate that claims adjudicators should presume anyone who receives public assistance (defined in 20 C.F.R. § 416.1142) meets this requirement, without the need to further collect information about their income or expenses. It appears that SSA is already contemplating this change, as a logical application of the proposed change in the recent Notice of Proposed Rulemaking to “Expand the Definition of Public Assistance Household” which explicitly referenced the applicable “defeats the purpose” POMS policy as one that would be impacted by the proposed rule. See 88 Fed. Reg. 67148 at FN23 (September 29, 2023). POMS should also instruct that recovery defeats the purpose of the program for all individuals who receive Full Extra Help with Medicare Part D. Recipients who received either public assistance or Extra Help have already been identified as being low-income, and SSA has already done the work to identify these people. Thus, SSA should not expend resources on verifying what is already known. To the extent possible, SSA should independently verify receipt of public assistance and Extra Help directly from their own systems or state agencies administering public assistance.
- Automate \$10 repayment plans as the default for T2 beneficiaries on extra help. Currently one in five Title II beneficiaries live in households at or below 150% of the federal poverty guidelines. Since these people already live in a precarious financial position, they will likely reach out to SSA staff and bog down the 800 number if and when SSA begins recovering alleged overpayments by withholding all or substantially all of their disability check. SSA policy allows a repayment rate of \$10 a month, without further development, for any beneficiary who is receiving Extra Help with Medicare Part D and who is savvy enough to ask for it. This policy is underused because it is a secret kept from many. SSA should make the \$10 repayment plan the default recoupment rate for beneficiaries that receive Extra Help—which SSA can confirm using information in its own system. SSA should then notify these Extra-Help recipients that unless they appeal, request a waiver, or request to repay the overpayment at a higher rate, the overpayment will

begin at \$10 a month. We believe Section 204 of the Act concerning Title II overpayments permits this proposal.

#### **IV. Update Outdated Occupational Information.**

The Task Force supports SSA's efforts to update the occupational information it uses to make disability determinations to reflect jobs as they exist in the current economy, instead of as they existed the last time the Dictionary of Occupational Titles (DOT) was updated in 1991. While we understand SSA has been undertaking efforts to update this data, it is unconscionable that people are found ineligible for benefits due to findings they can do jobs that are obsolete in today's economy, such as addresser (DOT 209.587-010), tube operator (DOT 239.687-014) or surveillance system monitor (DOT 379.367-010). SSA should take immediate steps to ameliorate this problem by taking administrative notice of the Occupational Requirements Survey (ORS). That way vocational experts can reference updated evidence in their expert testimony to support conclusions about job numbers that are no longer consistent with the outdated DOT.

#### **V. Improve Access to Children's SSI Benefits.**

Considering how wide-spread and devastating childhood poverty is in the U.S., it is unconscionable that SSI is so challenging for children with disabilities to access and maintain. Between 2010 and 2020, there was a 45% decrease in SSI child applications and a 37% decrease in SSI child awards. The largest decrease in SSI applications and awards during the COVID-19 pandemic was among children. Today, the 986,000 children receiving SSI represents a decrease of over 300,000 (more than 25%) compared to a decade ago. SSA could take a series of steps today to improve access to children's SSI benefits:

- **Prioritize an online SSI application for children.** The Task Force requests that parents have access to an online application to apply for children's SSI benefits, just as SSDI applicants do. Low-income parents raising children with severe disabilities are already shouldering so many burdens, including the need to find or manage childcare while applying for benefits. Allowing parents to complete applications online during nap time, or at night when their children are asleep, would make it far easier than requiring them to find childcare while they attend to applications, or try to watch their children while undertaking SSA's lengthy application interview either in local offices or over the phone.
- **Simplify Dedicated Account Rules.** When a child is approved for SSI, SSA policies make it so burdensome to access and use the past-due payments they are owed for the time they spent waiting for SSA to approve their claim. Many of these funds go completely unused and un-collected by the families of poor disabled children who qualify for SSI benefits. A 2023 SSA OIG report estimates SSA underpaid over \$300 million dollars to 50,000 qualifying children.<sup>5</sup> The report also found delayed

---

<sup>5</sup> SSA Office of Inspector General, *Dedicated Accounts for Supplemental Security Income Recipients* (Sept. 20, 2023), <https://oig.ssa.gov/assets/uploads/a-04-21-51031.pdf>.

payments from SSA, often stretching into years. SSA can act immediately to ameliorate this issue by using its authority under Title XVI of the Social Security Act to broaden the allowable uses for these funds and streamline the reporting requirements for caregivers, as outlined in the SSAB’s 2021 Statement on Dedicated Accounts.<sup>6</sup> According to the Act, funds in dedicated accounts may be used in any way “that the Commissioner determines to be appropriate,” as long as it benefits the child and is related to their impairment(s). The statute also gives the Commissioner authority to “establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account.” SSA could revise the POMS GN 00602.140(B)(1) and (F) to clarify that “other items and services SSA determines appropriate” includes, at a minimum, those that meet the much less strict and burdensome rules for ABLE accounts, which allow funds to be used for a broad range of “qualified disability expenses,” such as housing, transportation, health, and basic living expenses. SSA should also limited the reporting requirements with dedicated accounts.

## VII. **Additional Administrative and Sub-regulatory Reforms**

The Task Force recommends SSA consider enacting other reforms within SSA’s current administrative authority which could reduce the administrative burden on claimants and on the agency, and improve customer service:

- Prioritize creating an online application form for all SSI applicants.
- Accept faxed applications: In the past and during the pandemic SSA was able to accept faxed applications, but SSA discontinued this service in August 2023. This presents a significant hardship for underserved populations, who may not have reliable addresses or phones. It also prevents third-party assisters from easily submitting applications taken when they meet homeless and similarly underserved claimants in the field.
- Repeal POMS DI 11005.016(C)(1) preventing Puerto Rico from sharing its Spanish language forms with other offices. Allowing claimants complete forms in their preferred language will ease the burden on the claimant and increase efficiency for SSA because they will get more complete information.
- Improve and streamline all notices and forms required to apply for benefits to lessen the burden on potential beneficiaries.

Respectfully submitted,

American Association on Health and Disability  
Autistic Self Advocacy Network

---

<sup>6</sup> SSAB, *2021 SSI Statement on Dedicated Accounts* (Aug. 25, 2021), <https://www.ssab.gov/research/2021-ssi-statement-on-dedicated-accounts/>.



Community Legal Services of Philadelphia  
Cure SMA  
Justice in Aging  
Lakeshore Foundation  
National Association of Councils on Developmental Disabilities  
National Association of Disability Representatives (NADR)  
National Committee to Preserve Social Security and Medicare  
National Disability Institute  
National Organization of Social Security Claimants' Representatives (NOSSCR)  
National Plan Alliance  
Source America  
The Arc of the US  
United Spinal Association