

Reconsideration: The Need to Fix a Flawed Process

Kathryn Olson

Democratic Staff Director, Subcommittee on Social Security

House Committee on Ways and Means

SSA National Disability Forum, November 28, 2018

SSA is Reinstating Reconsideration Appeals Step Despite Significant Congressional Concerns

- ▶ Congress intends that workers get the benefits they have earned, if they meet eligibility criteria, at the earliest time possible.
- ▶ July 25, 2018 hearing before the Social Security Subcommittee
 - ▶ SSA was roundly criticized for its plan to reinstate reconsideration in the 10 states that do not currently have it.
 - ▶ SSA is making no improvements or changes to the process, despite longstanding concerns.

Reconsideration Widely Considered a “Rubber Stamp,” Flawed Appeals Step

- ▶ Only 12 percent of prior decisions are overturned at reconsideration
- ▶ ALJs - who conduct face to face hearings - overturn about half of reconsideration denials
- ▶ CRS report detailing decades of SSA attempts to improve reconsideration
- ▶ Disabled workers are already subject to record-breaking delays for appeals hearings; reconsideration adds 4 more months or longer to the delay.

More People Would Be Harmed than Helped

- ▶ Under SSA's plan - in just the 10 states:
 - ▶ **50,000** severely disabled workers **would have to wait longer** for their earned benefits - they would have to go through the reconsideration step before ultimately being found eligible for benefits by an ALJ, adding months to already excessive wait times
 - ▶ **5,000** severely disabled workers, who otherwise meet eligibility criteria, would **lose benefits altogether** - they would be denied at reconsideration, and would give up in discouragement instead of appealing to an ALJ
 - ▶ Only 21,000 people would get benefits faster because of reconsideration

Bipartisan, Bicameral Objections to Reinstating Reconsideration in its Current Form

Congress sent three separate letters to SSA objecting to the reinstatement of reconsideration:

- ▶ “There is little evidence to show that reconsideration is a meaningful step in the disability appeals process. ... Instead of reinstating reconsideration, SSA should dedicate its efforts to identifying effective, evidence-based changes that would improve the timeliness and accuracy of disability determinations.” - *Bipartisan letter signed by every Member on the House Subcommittee on Social Security, July 26, 2018*

- ▶ “We are alarmed by the agency’s willingness to adopt a flawed system -- one that will lead to further delays in the processing of essential benefits -- in the name of cost savings and national uniformity. We urge SSA to halt its plan.” -- *Bipartisan letter signed by 10 Senators, September 6, 2018*
- ▶ “There is no shortage of ideas for increasing SSA’s ability to make the right decision on a claim earlier in the process and prevent the need for lengthy appeals. SSA should invest its time and resources into developing an improved adjudication process, and not further expand the problematic reconsideration step into additional states.” -- *Letter signed by 48 Members of Congress representing affected states, September 14, 2018*

Despite Congressional Opposition, SSA Proceeding to Reinstate Reconsideration in its Current Form - With No Improvements

- ▶ Starting January 2019 in California, Colorado, Louisiana, New Hampshire and New York
- ▶ Concluding by spring of 2020 in Alabama, Alaska, Michigan, Missouri, Pennsylvania

How To Improve the Adjudication Process

- ▶ No shortage of ideas - many have been partially tested in preliminary form
- ▶ Today's panel
- ▶ Key themes:
 - ▶ Better case development, evidence collection
 - ▶ Earlier personal contact with applicant - many claims filed on-line, or after short intake interviews, but applicants do not understand what is needed to establish eligibility
 - ▶ Improve quality of determinations:
 - ▶ Training
 - ▶ Policy clarifications
 - ▶ Access to medical and vocational experts
 - ▶ Ensuring adjudicators at all levels follow same policy
 - ▶ More quality-assurance reviews of denials (remove bias)

Start with Basic Research

- ▶ What was tested previously, and what happened? What are lessons learned?
- ▶ Why is a claim allowed after a prior denial - what changed?
 - ▶ Between initial and redetermination
 - ▶ Between redetermination and ALJ
- ▶ Why the variation in reconsideration allowance rates across states? Ranges from 7 to 21 percent
- ▶ Are ALJs and DDS examiners applying the same rules, in the same manner?
- ▶ What types of impairments, vocational profiles, etc. are most likely to have decisions that are later overturned?
- ▶ Can SSA do a better job at intake?
 - ▶ On-line vs. SSA intake; role of training and adequate time for interviews
- ▶ What role do professional representatives play?

Final Thoughts

- ▶ Resources
 - ▶ Disability adjudication can't be done on the cheap.
 - ▶ Appeals are costly - for individuals with severe disabilities, and for SSA. Invest up front to get the right decision made early on
 - ▶ SSA and Congress must both do their part:
 - ▶ SSA must make clear the cost of a high-quality and fair adjudication process, request in their budget
 - ▶ Congress must provide adequate funding
- ▶ Leadership
 - ▶ SSA has long history of trying to improve adjudication process - mixed results
 - ▶ Often disrupted by leadership changes
 - ▶ Research and evidence should underlie changes
- ▶ Today's forum a start - but what next?