



Center for Public
Representation

January 22, 2020

Commissioner Andrew Saul
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401
Submitted via www.regulations.gov

Re: Notice of Proposed Rulemaking on Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 36588 (November 18, 2019), Docket No. SSA-2018-0026

Dear Commissioner Saul:

Thank you for the opportunity to submit these comments. The Center for Public Representation (“CPR”) is a national legal advocacy organization that promotes the full inclusion of people with disabilities in all aspects of life, and we write to express our strong opposition to this proposed rule. Through policy advocacy and litigation, CPR works to ensure that people with disabilities can access health care and other services they need to live and participate in their communities. Our work is nationwide, however in Western Massachusetts we administer a local State funded grant to represent individuals in Social Security Disability claims.

I am writing as a long time advocate with thirty years of experience representing claimants in Social Security claims. Much of my time has been spent in publicly funded law offices not only pursuing new claims, but helping recipients with “post-entitlement” problems such as Disability Cessations, or Continuing Disability Reviews cases (“CDR’s”). With regard to the current proposed rules, I see this as the classic case of a solution in search of a problem. Or perhaps worse, it may create more problems than it solves.

In an overloaded and overwhelmed system with three categorical periods for reviewing cases, the first two being 18 months and the second at 36 months, can there truly be any pressing need to shoe horn in a new category at 24 months? Resources are stretched too thin already. Other comments from organizations such as the National Organization of Social Security Claimants Representatives and the Consortium for Citizens with Disabilities have noted that the criteria for selecting cases to review, the rationale for adding this category, and an actual medical definition of the proposed category are not sufficiently explained by the proposed rule, and no data has been presented to justify the need or indicate any positive result. I agree, but wish to use my opportunity to comment by describing my experiences and recounting real life case studies which are illustrative.

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The proliferation in recent years of CDR's has been noticeably apparent to anyone practicing in this field. Getting calls from frantic claimants who have been told their benefits will stop or that they have been overpaid and now owe the government money used to be a fairly minor part of this practice. Such calls are now almost a daily occurrence, and are beginning to overwhelm not only claimants, but legal service attorneys. As these cases do not generate attorneys fees, the private bar cannot help, and recipients are usually left on their own to navigate an almost incomprehensible review standard, and a sometimes impossible system to navigate. All are, of course, disabled. Most have been unaware that they needed to remain in "litigation" mode for the rest of their lives, tracking and maintaining medical evidence to be able to prove they remain disabled and fight off a determination that their condition has improved.

Moreover, the draw of needed resources from more important areas in order to focus on this unnecessary initiative is the most troubling aspect of the proposed rule. The single biggest problem today at SSA is the complete inaccessibility and lack of service at local offices, leading to inefficiency, delay, improper outcomes, and genuine anxiety and often tragic denial of benefits for many disabled people with limited resources. I field calls every day from distraught individuals who have received multiple letters from different offices which are often confusing, often contradictory, and often simply factually wrong. The most common complaint is the inability to reach an SSA worker on the phone, or to be seen at a field office. (I wish to add as a personal observation that while the improvement of on-line resources serves some segments of the population and some areas of service it is all but useless and unfathomable for most poor and disabled individuals, and simply fails to serve many areas of need for many recipients.) Often, including in the case of CDR's when claimants are told to respond in writing within ten days to have their benefits continue pending an appeal, they receive the notice after the ten days have already run, are given the wrong forms to submit when they inquire, are given an appointment at a field office and then are refused service when they arrive at the appointed place and time. I have personally experienced each of these events with my clients.

The shortcomings of the existing CDR system must be addressed before any new categories for review are added. The real problem is disabled beneficiaries not comprehending the process or being able to navigate the system, and the standards being improperly applied. In one tragic case I encountered, a single Mother appealed her cessation too late to continue receiving benefits while the case was litigated and was in dire straights. Her disability had been awarded well over ten years prior because of an intellectual disability, measured by IQ scores among other things. She had been deemed to meet one of SSA's "Listed Impairments" in a category which traditionally has not been seen as one where improvement is even possible. At the time I met her, she was confused because she thought she was receiving benefits because of a bad back. She was unaware that she should have responded to SSA with information about her psychiatric treatment and supportive services. Because of lack of understanding, resources, transportation, involvement in the Court system where she was at risk of losing her children, and a host of other reasons, she had missed an appointment with a consultative doctor arranged by SSA. She was highly dependent on caseworkers from a child services agency who were unable to get her to that appointment but did manage to appeal the cessation of her checks and refer her to my office. The decision which had denied her benefits cited a lack of evidence, and actually found no evidence to show improvement. This itself was a misapplication of the law and should have resulted in continuation of benefits. By the time we presented the case to an Administrative

Law Judge, that Judge had no choice but to reinstate her benefits. We were, naturally, able to provide evidence of her impairment, but that should never have been required. An unrepresented woman of limited intellectual ability left to the mercy of a broken system was at maximum risk.

Another client came to me after being cut off of benefits for medical improvement. In this case she had suffered a serious back injury several years earlier and had undergone two surgeries. Indeed her surgeons were reporting that her last surgery had been successful and that she had met her maximum medical improvement (a term of art used in workers compensation cases, but largely meaningless in a Social Security Disability case). Although also unrepresented this woman had done her best to present evidence of multiple additional impairments which had developed over time, including severe psychiatric conditions, and pain syndromes and connective tissue disorders related to her injury. At hearing we were able to point out to an Administrative Law Judge that the same surgeon whose notes had talked about improvement since the surgery had done an evaluation rating her physical capacities at a level which SSA would deem disabled for a woman of her age at the time of the CDR. He further reported that her pain alone would prevent her from working. We also provided to the ALJ evidence and medical records of years of treatment from psychiatrists and therapists which established a disability for a new and additional condition. All of this had been overlooked throughout the course of the CDR. The ALJ, of course, reversed the denial and reinstated benefits.

Cases such as these demonstrate the harm that can come from misapplication of the current system and the need to improve the system already in place. This must be done far ahead of adding more and more reviews to an already flooded and flawed system. Taking precious resources away from basic services in order to needlessly increase the number and frequency of CDR's would be a huge mistake.

Thank you again for allowing me this opportunity to comment.

Respectfully submitted,

David Waldfogel
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