

October 21, 2005

Commissioner Jo Anne B. Barnhart
Social Security Administration
Attn: Windsor Park Building
6401 Security Boulevard
Baltimore, MD 21235

Re: Administrative Review Process for Adjudicating Initial Disability Claims; Proposed Rule 20 CFR Parts 303, 305, 416, and 422

Dear Commissioner Barnhart:

The American Public Human Services Association (APHSA), in concert with its [affiliate organization](#), the National Association of State Medicaid Directors and [its](#) Center for Workers with Disabilities, is pleased to submit this comment letter on the Social Security Administration's (SSA's) notice of proposed rulemaking to change the administrative review process for adjudicating initial disability claims. APHSA is commenting on the notice of proposed rulemaking (NPRM) published in the July 27, 2005, *Federal Register* (Volume 70, Number 143) for SSA.

Lack of a Work Emphasis

APHSA is concerned about the lack of a "back to work" provision in the proposed rule. The NPRM does not address whether a disability claimant may work and keep his or her benefits simultaneously. Likewise neither "disability" nor "obviously disabled" is defined in the language of the proposed regulation, which may only further the confusion over eligibility for disability benefits and the implications of income derived from work and the ability to keep these benefits.

Role of State Disability Determination Offices

We are also uncertain about how the role of each state's disability determination office would change under the new rules. With the federalization of the reconsideration step, APHSA urges SSA to issue a clear directive that the federal agency be provided the resources to handle the increased workload as a result of these proposed changes to the determination process. Furthermore, SSA's decision to limit Reviewing Officials to attorneys may result in the unintended consequence of even longer delays in determining disability. APHSA recommends

that SSA retain the current practice of allowing non-attorneys with disability determination experience to adjudicate appeals of initial determinations to preclude a backlog of claims and the added expense of attorneys' salaries.

Implications for State Medicaid Offices

One of the chief questions by state Medicaid offices is whether SSA's proposed regulation would require Medicaid offices to alter how they currently determine disability. APHSA believes SSA should provide state Medicaid offices with the software used in making Quick Disability Determinations (QDDs). Furthermore, states want clarification on whether they will be allowed to contract with the Federal Expert Unit in performing disability determinations for Medicaid in the event that Medicaid does not share a disability determination unit with SSA. Last, states are interested to know whether individuals who meet the state Medicaid standard for disability will be able to meet the disability determination threshold for SSA. This is especially important to consider in the event that one adjudication unit determines eligibility for both Medicaid and SSA in a particular state. APHSA recommends that states be allowed to set their own disability determination standards and not be held to those of SSA.

Scope of Quick Disability Determination Claims

Another concern state Medicaid offices expressed is what percent of total disability determinations SSA expects to qualify for QDDs. Although the NPRM indicates that SSA expects the range of qualifying claims to be relatively small at first, it does not provide an estimate of how many QDD claims the new software and dedicated QDD personnel might eventually deem eligible.

Time to Implement the Proposed Changes

The proposed regulation indicates that the changes would be implemented regionally; however, it does not indicate how long SSA expects full implementation to take. Given the complexity of these proposals and the anticipated increase in staffing at the federal level, APHSA urges SSA to provide sufficient time to implement and analyze the new procedures and policies.

In summary, we recognize SSA's efforts to make the disability determination process more accountable, timely, and fair. As is evident from the comments and questions raised above, the proposed rule leaves several questions unanswered that are important to state disability determination units and Medicaid offices. We would be pleased to meet with you at any time on these matters. If you have any questions, please do not hesitate to contact me at (202) 682-0100, ext. 235. Thank you for considering our comments.

Sincerely,

Elaine M. Ryan
Deputy Executive Director
Policy and Government Affairs