

Social Security Disability Decision Making

Richard J. Pierce, Jr.
Lyle T. Alverson
Professor of Law
George Washington University

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Evidence of Problems

- % of population determined to be disabled has doubled
- About half of increase is due to 48-67% rate at which 1400 ALJs reverse decisions to deny made by two teams of examiners and medical advisors
- Reversal rate varies by ALJ from 8.6% to 99.7%
- Over 100 ALJs reverse in over 90% of cases
- Reversal rate varies by region from 37.42% to 87.92%

Sources of Problem

- Inherent difficulty of determining degree of pain, anxiety, or depression—the 3 types of disabilities that dominate the population of cases in which ALJs reverse and award benefits
- Over half of US population has one of these health conditions

More Sources

- ALJs have no relevant expertise and little relevant training
- ALJs can not be subjected to quality control mechanisms or to performance evaluation

More Sources

- Asymmetry, in the sense that an applicant can appeal a denial of benefits many times but SSA can not appeal a grant of benefits

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- Assymetry, in the sense that over 80% of applicants are represented by advocates who earn over \$1B a year, while SSA is never represented until district court level
- Advocates working on contingent fee basis steer applicants to doctors known to be sympathetic, submit evidence on a selective basis, and urge applicants to “hug their pain”

More Sources

- District courts defy Congress by reversing half of cases in which ALJs deny benefits
- High reversal rate, pressure on ALJs to decide a large number of cases, and lack of power of SSA to appeal grants of benefits creates bizarre incentive for ALJs to grant benefits in all close cases

More Sources

- Applicants and advocates can sandbag because record never closes
- SSA applies a “treating physician rule” that tilts balance in favor of applicants with good advocates even though Supreme Court unanimously urged SSA to reconsider the rule in 2003

Potential Fixes

- Eliminate the ALJ stage of decision making and make the second rejection by an examiner/medical advisor team the final decision
- Authorize SSA to evaluate the performance of ALJs and to subject them to quality control mechanisms

More Potential Fixes

- Eliminate, modify, or reduce the compensation of disability advocates
- Provide a clear date for closing the evidentiary record
- Rescind the treating physician rule
- Amend the definition of disability to eliminate pain, anxiety, and depression

More Potential Fixes

- Implement review of all awards of benefits based on pain, anxiety, or depression made in the last decade
- Eliminate judicial review of decisions that deny benefits
- Make grants of benefits temporary