Social Security Disability Decision Making

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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