

Policy Analysis

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Facilitating Fraud How SSDI Gives Benefits to the Able Bodied

by James M. Taylor

Executive Summary

Policymakers bickering over how to “save Social Security” often turn to remedies like costly tax hikes or painful cuts in retirement benefits. While Social Security in its present form will go bankrupt long before today’s young workers retire, policymakers are ignoring one way in which the system spends more than it should. The Social Security Administration is currently handing out a flood of benefits under the Social Security Disability Insurance program to persons who are not disabled and thus have no legitimate reason to receive those benefits.

SSDI was established as a source of income for persons who are so severely disabled that they cannot perform any meaningful work that exists in the national economy. The program, which allocates funds directly from Social Security general revenues, was never intended to be as broad and expensive as it is today. Yet current SSDI payments account for 14 percent of all Social Security distributions. In 1999 alone, SSDI handed out a staggering \$57 billion in disability benefits. Further, the federal government maintains dozens of programs that raise the amount handed to persons with various degrees of disability to an annual grand total of \$110 billion.

A review of SSDI cases and a look at SSDI statistics show a clear pattern of SSA officials’ turning a blind eye to all standards and common sense

when passing out benefits. For example, SSA officials frequently award full SSDI benefits to persons who pursue disability discrimination claims under the Americans with Disabilities Act. However, to assert an ADA claim, a plaintiff must argue that he is fully capable of performing a desired job. How can a person be simultaneously able and unable to work? Worse yet, in many cases SSA awards SSDI benefits to persons whose ADA claims were dismissed precisely because the persons were not disabled, even under the ADA’s more lenient definition of “disability.”

Despite very strict SSDI eligibility standards, SSA has opened the floodgates to innumerable, profligate benefit awards. For example, SSA is currently paying a medical doctor to remain at home simply because he prefers administrative work, which he can perform with very minor difficulty, to treating patients, which he can perform with no difficulty at all. This and numerous other cases documented in this study demonstrate how persons who have very minor impairments and who would have little or no difficulty remaining in the workforce are nevertheless collecting billions of dollars in SSDI benefits each year. To slow the drain of Social Security funds, policymakers must stop abuses of SSDI that are facilitated by SSA itself.

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Language and Purpose of SSDI

In 1999 persons with disabilities, including those with only minor impairments, collected some \$110 billion in benefits that the federal government disbursed through a variety of programs.¹ Recognizing that some persons have disabilities that are more severe than those of others, the federal government reserves the Social Security Disability Insurance program exclusively for those persons with handicaps so severe that they are totally incapable of performing any type of meaningful work. SSDI benefits are funded solely through Social Security taxes and distributed directly from Social Security general funds.² The Social Security Administration estimates that in 1999 alone it paid out \$57 billion in direct benefits, 14 percent of all SSA annual disbursements, to persons claiming to have such severe disabilities.³ Yet an examination of the facts surrounding numerous individual SSDI awards clearly demonstrates that the system is riddled with fraud, waste, and abuse. The most disturbing aspect of this abuse is the willingness of SSA itself to permit persons to tap into SSDI despite their undeniable ability to work.

The Social Security Act of 1935 established more than just a retirement program for American workers. It also set up the SSDI program to provide benefits for persons with the most severe disabilities.⁴ To qualify for SSDI benefits, a person must have a medical condition of such objective and unvarying severity that it is expected to result either in death or in severe functional limitations that last for a period of years and preclude the person from performing his previous work or "any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives or whether a specific job vacancy exists for him."⁵

The meaningful-work standard is meant to reserve SSDI benefits for those who are completely incapable of working in virtually

any full-time job. A mere difficulty in obtaining work does not entitle a person to SSDI benefits. In addition, persons who are simply unable to perform their previous or preferred work because of a disability, but are still able to perform work in other professions, are not eligible for SSDI benefits. As stated in SSA guidelines, "Some programs may pay for partial disability or for short-term disability. Social Security does *not*. Disability under Social Security is based on your inability to work. You will be considered disabled if you are unable to do any kind of work for which you are suited. . . ."⁶ The strict SSDI qualification standards are understandable. Although the federal government distributes \$110 billion annually through a plethora of disability programs, SSDI benefits are reserved for only those individuals with the most severe disabilities.⁷

Applicant and Agency Procedures

When applying for SSDI benefits, each claimant must present contact information and medical records from his doctors, therapists, hospitals, clinics, and caseworkers.⁸ These entities are required to provide all relevant information, including information that casts doubt on the claimant's SSDI eligibility.⁹ The claimant is also required to provide the names of all employers and job duties during the previous 15 years.¹⁰ Each claimant is required to document his work history, specifically in relation to his asserted disability.

From the above information, SSA determines if there is sufficient medical evidence to award SSDI benefits. SSA retains the power to request further medical or nonmedical information relevant to the claim to supplement insufficient medical information, resolve conflicting medical opinions, or verify questionable assertions. Moreover, SSA may require the claimant to undergo an independent medical examination.¹¹

SSA has access to all relevant medical and work information through the above proce-

dures, as well as the means to contact physicians and employers to verify each claimant's actual medical condition and the true reason the claimant is no longer employed. Accordingly, SSA has had actual or constructive knowledge of all the facts in the cases documented below.

SSA has developed a five-step evaluation process to determine whether an individual qualifies for SSDI benefits.¹² At step one SSA determines whether the individual is engaged in "substantial gainful activity." If he is, benefits are denied. If he is not, at step two SSA determines whether the individual has a medically severe impairment. According to the SSDI guidelines, "If you do not have any impairment . . . which significantly limits your physical or mental ability to do basic work activities, we will find you . . . are, therefore, not disabled."¹³ If the individual can still be classed as disabled, at step three SSA determines whether the impairment is equivalent to one on a list of disabilities considered so severe that they define the individual as disabled and qualified for SSDI. If the impairment is not one of those listed or an equivalent, at step four SSA determines whether the individual can perform his past work. If he can, he is not disabled under SSDI. If he cannot perform his past work, at step five SSA asks if he can perform any other work in the economy, in view of his age, education, and work experience. If he can, he is not disabled under SSDI. If he cannot, then he is granted SSDI.

Evidence of Rampant Abuse

Despite the clear language and the compelling purpose behind the strict SSDI eligibility standards, SSA has been allowing persons with minor or nonexistent disabilities to collect SSDI benefits. Whether motivated by misguided altruism, political expediency, or bureaucratic indifference, SSA flagrantly disregards both the language and the spirit of the SSDI program. SSA has effectively evaded any meaningful third-party supervision and has become the fox guarding the hen house of

Social Security funds. As a result, Social Security resources, intended to provide for the most severely disabled Americans who genuinely cannot work, are limited and dwindling. Moreover, the payment of billions of Social Security dollars annually to persons with only minor impairments wastes money meant for retirement and pushes the system more quickly toward bankruptcy.

The ADA Perspective

A principle reason that the abuses of SSDI have heretofore not come to light is that SSA does not release information on individual awards, and few SSDI recipients have any incentive to release the information themselves. Those few SSDI cases that come to public attention usually involve claimants who also file lawsuits under the Americans with Disabilities Act or other disability discrimination laws. Accordingly, the cases discussed below, which were brought to light through disability discrimination suits, represent an extremely small sampling of the abuse that occurs in the system.

In most of the cases, a federal judge was charged with determining whether the claimant had a qualifying "disability" under the ADA. The tests for determining whether a person is "disabled" under the ADA are far more lenient than those used to determine if a person is qualified for SSDI benefits. A person is "disabled" under the ADA if he is substantially limited in any major life activity. A person claiming to be substantially limited in the major life activity of working need show only that he is precluded from a "broad range" of jobs. But a person may be precluded from a broad range of jobs and still be perfectly capable of performing his current job or many other jobs available to him. To qualify for SSDI benefits, however, a person must be so severely disabled as to be completely unable to perform any substantial gainful work that is reasonably available *anywhere* in the national economy.

Accordingly, a person may be disabled under the ADA but still fall well short of qualifying for SSDI benefits. Moreover, if a

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person is not disabled even under the lenient ADA standard, then, by any definition meant to reflect the actual situation, that person cannot be so severely disabled as to qualify for benefits under the stricter SSDI standard. Nevertheless, in a majority of the following cases, SSA granted the claimant full SSDI benefits even after a federal court ruled that the claimant did not meet even the ADA's more lenient disability definition.

Of further importance, any person who files an employment discrimination claim under the ADA is by definition arguing that he can perform a particular job, though often with the stipulation that the employer make some "reasonable accommodation" for the person's condition. If a person has asserted under oath that he is capable of performing one or more jobs that he desires, then logic tells us that that person cannot at the same time claim under oath that in reality he cannot perform any type of work that exists in the national economy. Nevertheless, in each of the cases discussed, the SSDI claimant did just that, and SSA conveniently ignored such sworn assertions in its zeal to hand out scarce Social Security funds.

In an attempt to get around sworn disability assertions, SSA has recently instructed its determinations personnel and its administrative law judges that persons who are fully capable of working can nevertheless be considered completely unable to work and thus can be awarded full disability benefits if they require simple workplace accommodations.¹⁴ This policy position totally ignores the fact that the ADA requires all employers to provide reasonable accommodations whenever and wherever disabled persons need them.¹⁵ Nevertheless, SSA has explicitly stated that it will make all benefits determinations in a make-believe world in which the ADA theoretically does not exist. Such a position clearly and completely undermines the statutory language, the intent, and the compelling goals of the SSDI program.

Court Rulings

The failure of SSA to accept the clear con-

flict of simultaneously claiming benefits under SSDI and the ADA is not merely a matter of negligence; it is a matter of policy that SSA has openly fought for all the way to the U.S. Supreme Court. In the 1999 case of *Carolyn C. Cleveland v. Policy Management Systems Corporation*, an individual applied for and received SSDI benefits on the basis of her total inability to work but then sued her former employer under the ADA, claiming that, at the time she was fired, she would have been fully qualified to perform her previous job if her employer had provided her with reasonable accommodation.¹⁶ The U.S. Court of Appeals for the Fifth Circuit, in keeping with a majority of its sister circuits, ruled that there was at least a rebuttable presumption that an SSDI recipient cannot be a "qualified individual with a disability" under the ADA and issued a summary judgment for the defendant. Cleveland appealed that summary judgment. She maintained that she was entitled to a trial on the particulars of her case.¹⁷

The SSA general counsel and various Clinton administration officials coauthored and submitted to the Supreme Court an amicus curiae brief supporting the SSDI recipient. According to the general counsel and the Clinton administration, the term "unable to work" does not mean that a claimant is actually unable to work. It instead is merely a "term of art," the meaning of which depends on the circumstances of the assertion. In other words, a person who unequivocally asserts a "100 percent disability," a "total disability," or a "complete inability to work" claim for the purpose of obtaining SSDI benefits cannot later be held to the common-sense meaning of those statements when asserting an ADA claim. The general counsel proceeded to parse disability definitions to argue that step three of SSA's five-step disability determining process, which presumes that certain conditions are disabling without any further individualized inquiry, can be expanded into wider assumptions about who can and cannot work.¹⁸

In making that argument, the SSA general counsel purposefully ignored the premise

underlying SSA's limited disability presumptions. SSA justified its presumption that a limited number of impairments such as quadriplegia entitle a claimant to SSDI benefits on the rationale that those particular impairments are so uniformly severe that they consistently render any person unable to perform substantial gainful work. To require an individualized inquiry into cases in which it is a foregone conclusion that the person cannot work would merely waste administrative resources.¹⁹ Those presumptions were not included in the Social Security Act; indeed, they were only developed by SSA for its own administrative convenience. Moreover, those presumptions were never authorized or intended to emasculate the underlying prerequisite that a claimant cannot obtain SSDI benefits unless he is precluded from both his previous job and any substantial gainful work that exists in the national economy. As explained by the Supreme Court in its 1987 decision in *Bowen v. Yuckert*:

If the impairment is severe, the (SSA) evaluation proceeds to the third step, which determines whether the impairment is equivalent to one of a number of listed impairments that the Secretary acknowledges are so severe as to preclude substantial gainful activity.²⁰

In its amicus brief the government also maintained that, in any given case, SSA needs to make no assumptions about whether a person might have been able to perform a job had reasonable accommodations been made. In other words, SSDI need take no account of an SSDI claimant's or recipient's efforts under the ADA.

The Supreme Court ruled on May 24, 1999, that SSA had indeed turned "unable to work" into a "term of art" under which a person can simultaneously be disabled and nondisabled: a person can both collect money from the federal government under SSDI and secure, on the basis of an ability to work with reasonable accommodations pursuant to the ADA, a job or compensation for

a job lost from a private employer.²¹ By purposefully distorting the context and meaning of its disability "presumptions," SSA has demonstrated its purposeful intent under the present administration to open the floodgates for billions of dollars in unintended benefits awards rather than enforce the strict eligibility standards explicitly established by the Social Security Act itself.

But the Court also stated that the ADA plaintiff cannot ignore the facts that he or she has made an SSDI claim not to be able to perform any work and that, in order to survive a defense motion for summary dismissal based on such a claim, the plaintiff must provide a sufficient explanation of the ADA assertion.

Further, the Court was addressing the question of under what circumstances a summary judgment could be made. In this particular case, the plaintiff maintained that at the time of her firing she was a qualified individual under ADA but that her condition later worsened, making her disabled under SSDI regulations. She therefore maintained that she was due a full trial and that it could not be presumed in her particular case that her ADA and SSDI claims were mutually exclusive.

It is also important to understand that the Court was addressing the question of when an ADA claim could be thrown out of court because an individual had applied for or was receiving SSDI; the Court did not directly address the question of when an SSDI claim might not accord with the law because the individual was attempting to return to a job from which he or she was dismissed, claiming that he or she could do the job were reasonable accommodation made. The Court acknowledged only that the two claims might be consistent but that that was, indeed, the matter to be determined in the courts.

Part-Time Work

Another problem with the SSDI system is that its officials frequently take liberties regarding the definition of "substantial gainful work" in the national economy. Persons who are able to work only sporadically or for just a few hours per week are generally not

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capable of performing substantial gainful work. However, many SSDI applicants are clearly capable of full-time work but request that their employers schedule them for just a few hours short of a full-time schedule in order to argue to SSA that they are limited to “part-time” work. In judging such cases, as some of the examples below illustrate, SSA officials often allow persons to work virtually full-time hours yet still collect benefits based on a “total disability,” precluding them from performing any substantial gainful work.

Claimant or Agency to Blame?

Finally, it is important to note that the following examples are not intended to criticize or pass judgment on the individual claimants. When a federal agency charged with disbursing federal dollars is derelict in enforcing its qualification standards, and instead seems extremely eager to hand out free money, the fault for the ensuing abuse lies more with the federal agency than with the individual claimants.

Case-by-Case Illustrations

The appalling pervasiveness of SSDI abuse becomes evident in an examination of some of the actual cases in which SSA has granted benefits to persons who are clearly capable of working. It is important to remember that SSA is authorized to grant benefits only when a person shows that he is so severely disabled that he is completely unable to engage in any kind of substantial gainful work. The following cases, numerous as they are, represent only a small fraction of SSDI abuses.

Doctor Refuses to Treat Patients. In 1992 a physician accepted an administrative oversight position with Kemper Life Insurance Company. His duties included reviewing medical files, discussing cases with underwriters, and writing medical opinions on pending cases. He spent six to eight hours each day using a computer keyboard.

A year after he began his job, the physician was diagnosed with carpal tunnel syndrome. He took a leave of absence before undergoing surgery for the ailment, but he never returned

to work after his surgery was completed. Later, he claimed Kemper would not let him return to his old job and would not meet his accommodation demands. He then filed an ADA discrimination suit, claiming that with reasonable accommodation he would be able to do his old job. Simultaneously, he filed for SSDI benefits, which are supposed to be reserved for those who are physically incapable of doing any work.

Presented with the physician’s ADA claim, a federal judge questioned whether the physician was actually disabled, even under the ADA’s more lenient standard. The judge noted that the physician faced restrictions in insurance work only to the extent that he required a modified workstation (which the insurance company or any other employer could easily provide) to allow him to perform extensive computer work. Moreover, the insurance company pointed out that the physician’s impairment did not preclude him from a broader range of jobs within the medical field. For example, he could still teach medicine, conduct medical research, and administer health plans. Further, the physician was not precluded from doing what most doctors do—examining and treating patients.

The physician countered that he had not treated patients for many years and had become accustomed to performing insurance work. He further argued that he should not have to look for work outside his immediate job market and that he had a large mortgage on his expensive house that would make it difficult for him to relocate to take a job elsewhere in the country. A federal judge deadpanned that the physician “certainly has not overwhelmed the Court with evidence of his unemployability.”

Nevertheless, SSA ruled that the physician was completely incapable of working and entitled to full disability benefits. In so ruling, SSA apparently determined that (1) no insurance company would ever agree to provide the physician with a modified workstation, (2) the physician should not be expected to actually examine and treat patients, and (3) the physician should not have to sell his expensive house in order to work for insur-

ance companies outside his immediate job market. Accordingly, SSA awarded the physician SSDI benefits.²²

“Claimant Held Forms Close to His Eyes.” The case of an automobile glass installer at Safelite Glass Corporation, who was laid off as part of his company’s reduction in force, shows a sloppy SSA passing out benefits without adequate investigation. Shortly after the installer’s termination, he applied for SSDI benefits, claiming that he had poor vision that precluded him from any meaningful work. He also claimed that his March 31, 1993, dismissal was based on age discrimination.

An eye examination concluded that the installer had corrected vision of 20/100 in his right eye and near-perfect 20/30 vision in his left eye. According to a medical doctor, the installer had only a “[s]light visual impairment,” which affected his performance of “fine visual tasks.” The doctor concluded that the “impairment does not meet or equal the list” of standards by which someone can be declared disabled and eligible for SSDI benefits.

Although the installer’s vision impairment was extremely minor and clearly did not preclude him from working, SSA nevertheless granted him full disability benefits. The SSA interviewer who decided to award benefits justified her conclusion, despite the treating physician’s medical findings to the contrary, by noting merely that “claimant held forms close to his eyes to read before signing.”²³

Bus Driver Caught Sleeping on the Job. In 1985 a bus driver for the Kansas City Transportation Authority was diagnosed with hypertension. Following her diagnosis, she easily controlled her condition by taking medication, and she was able to continue performing her job.

Ten years after her hypertension diagnosis, the bus driver was caught sleeping on the job. Her supervisor informed her that she would be fired if she was caught sleeping again. Two months later, the supervisor again caught the driver sleeping in her bus and subsequently fired her.

The bus driver filed an ADA discrimination suit and simultaneously applied for SSDI benefits. In her ADA suit, she argued

that she was disabled because (1) she had hypertension, (2) she had recently banged her knee on a fare box, and (3) her hypertension medication made her drowsy when mixed with pain medication for her knee.

A federal court soundly rejected the bus driver’s assertion that she was disabled, even under the lenient ADA standard. The court pointed out that the bus driver had successfully controlled her hypertension for more than 10 years, and the hypertension did not impair her ability to work or engage in any other major life activities. Moreover, her bruised knee was only a temporary injury that fell far short of a disability. Finally, she had combined her hypertension and pain medications for only a short time, and she could have easily avoided any drowsiness by simply taking a different pain medication.

Despite the clear findings of the federal court, and despite the fact that the bus driver had worked for 10 years without any medical restrictions, SSA awarded the driver full disability benefits. Incredibly, SSA concluded that the bus driver’s temporary knee bruise and her easily controlled hypertension permanently and completely prevented her from driving a bus or engaging in any other kind of substantial gainful work.²⁴

Waiter Had Trouble Watching TV, Broke Anti-Theft Rules. The Hyatt Regency Hotel at Chicago’s O’Hare Airport was experiencing a rash of thefts, and management suspected that employees were involved in many of the crimes. To counter the thefts, the hotel distributed multiple memoranda reiterating its employee entrance and exit policy. According to the policy, any employee caught entering or exiting the hotel from any door other than the employee entrance would be terminated.

Shortly after issuing its memoranda, the hotel learned that a banquet waiter had exited the hotel through a public door while ostensibly taking a cigarette break. Pursuant to the entrance and exit policy, in September 1994 the waiter was fired. The waiter then filed an ADA disability discrimination suit and applied for SSDI benefits. The waiter claimed that he was disabled

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simply because he had poor vision. In his right eye, he had 20/400 uncorrected vision, though he had near-perfect 20/25 vision in his left eye.

In addressing the waiter's ADA claims, a federal judge pointed out that the waiter's vision did not at all restrict his performance of any of his job duties. The waiter's job performance had been quite satisfactory before his termination, and he had never requested any assistance in performing his job. Moreover, his vision was sufficient for him to drive to and from work each day. Although he claimed to have difficulty reading and watching television, he could clearly perform all his job duties. And, of course, with the ADA suit the waiter was clearly admitting that he could do his job.

Even though the waiter had proven that he could see well enough to drive a car, perform his job, and freely engage in all other major life activities, SSA determined that he was incapable of performing any work and entitled to full benefits. On the basis of a minor vision impairment and documented job misconduct, SSA is giving the waiter lifetime disability payments from cash-strapped Social Security funds.²⁵

"Depends" Undergarments Totally Disabling? A special police officer for the Washington Metropolitan Area Transit Authority experienced frequent urinary infections and incontinence. While unpleasant for him, the officer's problems did not prevent him from reporting to work and successfully performing his duties.

As a job prerequisite, the officer was required to maintain Special Police Certification. However, he inadvertently let his certification lapse. When a supervisor subsequently asked him to produce his certification, the officer lied about his certification status. Ultimately, the supervisor discovered the lie and the fact that the officer was no longer certified. As a result, in October 1992 the officer was fired.

Although the officer clearly was capable of working, and indeed had been successfully performing his job duties up to the very day he was fired, he applied for SSDI benefits. SSA granted

the officer full benefits, apparently finding that the officer's urinary incontinence suddenly and coincidentally precluded him from leaving his home and holding any job from the moment he was fired for his misconduct.²⁶

Cook Experienced Hurt Feelings. An applicant for a cook's position at a Wendy's restaurant in Tulsa, Oklahoma, requested a few hours less than a full-time work schedule so that he could continue to receive SSDI benefits related to a kidney impairment. The restaurant met his request by allowing him to leave work early three days per week. This situation in itself points to a major problem with SSDI. While SSDI is supposed to be for those who, because of a disability, can find no meaningful employment in the economy, SSA frequently exercises its discretion to allow individuals to work virtually full-time hours and still receive benefits.

Several months after starting his job, the cook began working under a new supervisor who did not initially know that the cook had been granted a special work schedule. The supervisor one day refused to let him leave work early. In response, in April 1997 the cook quit his job.

When the restaurant's president of human resources learned of the misunderstanding, he contacted the cook, apologized for the misunderstanding, offered the cook his previous work schedule, and offered him back wages for the time that he had refused to report to work. The cook refused to accept the president's apology, offer of reinstatement, and offer of back pay and instead took a job at another restaurant. Some time later he brought a complaint against his former employer under the ADA. A U.S. appeals court rejected his claim.

Despite the unmistakable proof that the cook was indeed medically qualified to hold numerous restaurant jobs, and despite the empirical evidence strongly suggesting that he was playing games with his requested working hours so that he could receive disability benefits, SSA continued to grant him SSDI benefits. Apparently, SSA felt that it should overlook the cook's employability

and his apparent cheating of the system because he had experienced hurt feelings due to his employer's innocent mistake.²⁷

Male Care Provider Refused to Perform "Women's Work." An employee at the Shield Institute of David, a care center for persons with disabilities, was responsible for assisting people into and out of wheelchairs. He presented his supervisor with a note from a chiropractor stating that he had injured his back. To accommodate the chiropractor's suggested work restrictions, the supervisor removed the employee's lifting responsibilities and assigned him to a position in which he would help feed people with severe disabilities.

Soon after beginning his new assignment, the employee complained because his new position did not allow him to eat lunch during his normal lunch hour. The supervisor deferred to the employee's preferred lunch schedule by assigning him to a dining room position in which he would not have to engage in any lifting and could also eat lunch at his preferred time.

The employee, however, refused to accept the dining room position because it was "women's work." When he refused to report to his new assignment, in August 1992, he was fired. He then applied for SSDI benefits.

On May 19, 1995, an SSA administrative law judge determined that the employee was totally disabled and entitled to full disability benefits from the date that he refused to work in the dining room. Apparently, SSA believes that America cannot expect a man to do "women's work."²⁸

Conductor Could Hike, Hunt, Camp, and Scuba Dive. A conductor for the Norfolk Southern Railroad injured his knee and back while working on the job. After successful surgery, the conductor nevertheless applied for a leave of absence and filed for SSDI benefits.

After surgery, the conductor engaged in a wide spectrum of recreational activities. He frequently hiked, fished, camped, hunted, and went scuba diving. Nevertheless, he claimed that he had difficulty putting on his shoes and that, when bathing, he needed help washing his back. His own physician

concluded, "I must admit that this man seems to be physically qualified to do almost any type of work. . . ."

In 1993 the conductor applied to get his old job back, admitting, in effect, that he considered himself fit to work. The railroad turned down his request, and the conductor filed an ADA complaint. In fact, the conductor was unable to return to his previous job only because that *particular* job required extreme physical exertion, including strenuous heavy lifting and extensive, prolonged walking. Nevertheless, medical and empirical evidence demonstrated that the conductor could perform almost any other kind of job.

Despite the conductor's successful participation in the above-listed rigorous sporting activities, SSA granted him full benefits. SSA thus implies that a person who can frequently hike, fish, camp, hunt, and scuba dive is physically incapable of performing any work, sedentary or nonsedentary, that exists in the national economy.²⁹

Federal Judge Calls Disability Claim "Frivolous, Unreasonable." In another case of simultaneous ADA and SSDI claims, a factory worker for Freightline Corporation, after less than a month on a new job and having already received a poor job evaluation, claimed he had a sore shoulder. Doctors at first placed some restrictions on what he could lift but later certified him for work without restrictions. Nevertheless, the worker failed to return to his job, despite the doctors' agreement that he had no medical restrictions, and he was therefore terminated. Amazingly, he then filed an ADA suit and applied for SSDI benefits.

A federal judge ruled that the worker clearly could not sustain his ADA claim because he was not disabled, even under the lenient ADA standard. The judge noted that doctors who examined him unanimously concluded that he was capable of working.

The judge went a step further and chastised the worker for bringing a disability claim that was "frivolous," "unreasonable," "without foundation," and "utterly lacking in merit." The judge noted that the worker's

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entire medical and employment history, including his previous jobs with other employers, was riddled with episodes of misconduct and false medical representations. The judge also took the unusual step of making the worker responsible for the employer's court costs “to provide a modicum of ‘justice’ to an innocent employer so improvidently and unfairly required to defend itself against frivolous and baseless allegations.”

Despite the unusually stern federal court ruling and the supporting conclusion of the worker's multiple examining physicians, an SSA administrative law judge on February 23, 1995, decided to grant the worker full SSDI benefits. Accordingly, the worker is no longer required to hold a job and apparently has no further need to present “frivolous” disability assertions “utterly lacking in merit.”³⁰

Manager Fired for Theft—An Amazing Disability Coincidence? When a person is terminated for misconduct for reasons wholly unrelated to a medical condition, SSA often rules that the person's previously nondisabling medical condition suddenly and magically rendered the person incapable of working at the very moment that the person was terminated for misconduct. This is the case even when the person was completely capable, without any difficulty whatsoever, of performing all aspects of his job up until the very moment of his termination. A typical example:

A district manager for the Disney Store began hearing rumors that an assistant store manager had tested positive for HIV. The district manager summoned the assistant manager to her office and informed him of the rumors. She explained that she was informing him of the rumors so that, should he want to, he could address them. She explained that she would offer him any help or support he needed to address the rumors, should he choose to do so. The assistant manager told her that he did not have HIV but thanked her for her support.

On November 16, 1993, one week later and in knowing violation of company policy, the assistant manager took money from the store's cash register and asked a coworker to

use the money to purchase some cigarettes for him. The assistant manager then discarded the transaction record, also a violation of company policy. After receiving the cigarettes, he did not reimburse the cash register.

The coworker informed management of the assistant manager's theft and his violation of company transaction policies. When the district manager confronted him, the assistant manager admitted his theft, broke down in tears, and stated that he had HIV. The district manager fired him.

The assistant manager filed an ADA claim and, a week after his dismissal, also filed for SSDI benefits on the basis of his HIV status. Despite the empirical evidence and the assistant manager's own admission that he was fully capable of working, and typical of its SSDI determinations, SSA ruled that the assistant manager's physical condition had become too severe for him to perform any kind of meaningful work, suddenly and magically, at the exact moment he was fired for theft. Now receiving full SSDI benefits, he no longer has any need to steal money to pay for his cigarettes.³¹

Worker Lost His “Sexual Prowess.” A bank worker alleged that a particular supervisor was harassing and persecuting him. As a result, he claimed to suffer “panic attacks,” which, according to the worker's treating physician, were solely and directly caused by the particular work environment. As the doctor stated, “Causation is related to employment difficulties at Chemical Bank [the worker's employer].”

When the worker sued the bank for disability discrimination under the ADA, a federal district court threw out the case because the worker could not demonstrate that he was disabled, even under the lenient ADA standard. As the judge observed, “[P]laintiff has persistently spoken of Mr. Mills [his supervisor] and feels himself persecuted.” In addition to the fact that the alleged panic attacks were narrowly related to a single work environment, the court pointed out that the alleged effects of the attacks were minimal. The worker alleged simply that he sometimes felt dizzy in

his particular work environment and that he experienced a decline in his “sexual prowess” because of his hostile work environment.

Although the worker’s alleged panic attacks were related to only a single work environment, and although the worker’s alleged decline in “sexual prowess” would hardly seem to remove him from the national workforce, in September 1995 SSA granted the worker full disability benefits. In so ruling, SSA ignored the findings of the federal court that the worker remained fully capable of performing a variety of (presumably nonsexual) jobs.³²

Rude Employee Awarded Lifetime Benefits. An airline reservations agent worked for U.S. Air for nine years. The agent generally performed his job well and frequently received positive job performance evaluations. However, the agent was also occasionally rude to coworkers and insubordinate to supervisors. For example, on one occasion he transferred a customer to a supervisor while sarcastically telling the customer, “Let’s all of us share this misery.” On another occasion, the agent became loud and accusatory during a disagreement with his supervisor. On other occasions, coworkers complained about the agent’s insulting them or calling them names. Finally, the agent wrote an article in a local newspaper criticizing his employer. As a result of those incidents, in November 1994, the agent was fired.

The agent filed for SSDI benefits, alleging that he had a history of bipolar depression. Despite the agent’s nine-year employment history, his generally positive work performance, and his failure to even look for a subsequent job, SSA granted him full disability benefits. SSA apparently decided that the agent’s bipolar depression somehow forced him to be sarcastic and rude, that his nine years of positive work performance were meaningless, and that society should not require people who are rude to ever look for or hold jobs.

One interesting aspect of this case is that it reinforces the very stereotypes about individuals with behavioral problems that disability advocates are trying to counter. Advocates

argue that merely being diagnosed with a particular impairment, for example bipolar syndrome, does not disqualify an individual from performing productive work in the economy. Indeed, the intent of the ADA is to keep such individuals in the workforce by mandating that employers not discriminate against them and provide reasonable accommodations where necessary. In this case, however, SSA seems to have assumed that a mere diagnosis of bipolar depression proves that a person is completely incapable of being a contributing member of society.³³

Professional Golfer Did Not Have to Work a Normal Job. In one of several celebrated cases, in 1999 professional golfer Ford Olinger had a dispute with the U.S. Golf Association over his disability, specifically his inability to walk the course for an entire round of golf. Olinger maintained that reasonable accommodation under the ADA required the Golf Association to allow him to use a golf cart when he played in tournaments.

However, even the Equal Employment Opportunity Commission recognizes the folly of granting disability benefits on the basis of a person’s inability to be successful in professional sports. In the context of professional baseball, EEOC regulations state, “Nor would a professional baseball pitcher who develops a bad elbow and can no longer throw a baseball be considered substantially limited in the major life activity of working.”³⁴ The ability to walk several miles during a round of championship golf is no more a prerequisite to all jobs in the national economy than is the ability to throw a 90-mile-per-hour fastball.

Amazingly, SSA granted Olinger full SSDI benefits, apparently believing that all jobs in the national economy require workers to walk several miles per day.³⁵

Clerk Quit When Denied Her Preferred Position. A service-desk clerk for Shaw’s Supermarkets took a medical leave because of carpal tunnel syndrome. After providing treatment, her physician released her to return to work with only minor restrictions. She was precluded only from significant lifting, overhead reach-

The worker alleged that he experienced a decline in his “sexual prowess” because of his hostile work environment.

In her ADA suit, the analyst claimed that she suffered from various conditions such as obesity, profuse sweating, and minor pains.

ing, and working overtime.

When the clerk prepared to return to work, she asked to be reinstated to her previous position. However, her employer told her that it had pared back its staff in her department and that the position was no longer open at her store. However, the store offered her other positions at various other stores. The clerk rejected the alternate job offers and filed a disability discrimination suit under the ADA.

In September 1998 a federal district court rejected the clerk's ADA claim. The court noted that the employer had offered her multiple job assignments but that she seemed unwilling to accept anything other than her preferred job assignment at her preferred job location. "Defendant reasonably concluded based on evidence in the record that Plaintiff only wanted to return to her service-desk clerk position, which did not involve moving to the checkout department when necessary." During the course of her ADA litigation, however, the clerk admitted that she could perform other job assignments. "Plaintiff argues that she would have accepted work involving other duties," observed the court.

Despite her admission that she could work her previous job and other jobs, and despite the evidence that her employer had offered her various other positions, the clerk applied for SSDI benefits. Amazingly, SSA determined that, despite all the evidence and her own admissions, the clerk was totally unable to perform any meaningful work and entitled to full SSDI benefits.³⁶

Obesity, Profuse Sweating Entitled Analyst to Full Benefits. A contracts analyst for Lockheed Martin Corporation was terminated in 1993 during a reduction in force. In the course of its workforce reduction, Lockheed Martin terminated or relocated roughly 25 percent of the workforce, retaining only those employees with the highest evaluation scores.

When the analyst was terminated, she filed an ADA discrimination suit as well as an age discrimination complaint. In her ADA suit, she claimed that she suffered from various conditions such as obesity, profuse sweating, and minor pains. A federal district

judge rejected her ADA suit.

Nevertheless, SSA determined that the analyst's minor physical ailments precluded her from performing any meaningful work. Although she was clearly able to perform her job up to the very moment of Lockheed Martin's reduction in force, SSA determined that the ailments suddenly and coincidentally rendered her unable to work just after she was terminated for nonmedical reasons.³⁷

Bank Teller Knew More about Medicine Than Physician? A teller at a Northside Savings Bank branch complained that she had various back, hand, and shoulder pains. As a result, over the years and at various branches of the bank, the bank allowed her to sit while performing her duties. However, after the teller took a medical leave of several months (while receiving disability benefits), an examining physician concluded that she was not disabled and was fully capable of immediately returning to work. Nevertheless, the teller refused to return to work and in October 1994 was terminated.

The teller filed an ADA claim charging discrimination and maintaining, "I can perform the essential functions of my job with an accommodation," even as she filed a claim for SSDI benefits based on her total inability to work.

Although her treating physician had determined that she was fully capable of performing her job, and although she herself had admitted that she could perform her job, an SSA administrative law judge deferred to the teller's subsequent self-diagnosis that she could not work. The SSA administrative law judge concluded that the teller was "unable to perform more than sedentary work."

Although the evidence clearly contradicted the SSA judge's ruling, even this ruling that the teller was limited to sedentary work did not justify an award of SSDI benefits. Bank teller positions as well as numerous other jobs that exist in the national economy are sedentary in nature. Moreover, the Social Security Act clearly excludes benefits for persons who are qualified to perform sedentary work. Nevertheless, the teller is collecting

SSDI benefits.³⁸

Sales Representative Did Not Get Along with New Coworkers. After working for her employer, Zilog, Inc., for six years, a secretary was promoted to a sales representative position. Soon after assuming her new position, however, she began having conflicts with certain coworkers. After she was twice counseled about those conflicts and given a poor performance review, she took two separate leaves of absence. Her treating physician recommended the leaves on the basis of the “stress” of being reprimanded for clashing with her new coworkers.

The secretary never returned from her month-long second leave of absence in 1993 and was terminated by her company per its absenteeism policy. The company did invite her to reapply after her physician certified that she was able to return to work and promised her that it would notify her if a suitable job became available. Instead of reapplying, however, she filed an ADA suit and applied for SSDI benefits.

In conjunction with the ADA suit, a federal judge noted that the secretary’s job difficulties were related to a single, particular set of coworkers. She had bipolar disorder, but her condition had remained stable through several years of employment and became aggravated only after she began interacting with particular coworkers. Indeed, her own physician stated that her workplace stress was “unrelated to her actual job description” and could be alleviated in a different office environment.

Despite the clear evidence that the secretary was restricted from working in only a single, particular work environment, SSA granted her full SSDI benefits. In reaching its decision, SSA ignored the opinion of her own treating physician, as well as her six-year history of satisfactory job performance before being assigned to work with a new set of coworkers.³⁹

SSA Discredits Physician, Accepts Forged Doctor’s Note. A delivery driver for Sound Distributing Corporation claimed in May 1993 that he injured his back while removing a case of beer from his truck. After taking a leave of absence, he presented his employer with a

doctor’s note clearing him to work without any physical restrictions. Nevertheless, he maintained that he could no longer drive a truck, and he subsequently requested reassignment to a packaging position. His supervisor granted the request.

Soon thereafter, the driver claimed that he could no longer work in the packaging position. He asked whether there were any jobs available in the light-duty can-counting department. The supervisor confirmed that vacant can-counting positions existed and offered him one. The driver, however, said that he was just inquiring and that he did not really want a can-counting position. Less than a week later, he again claimed that he could not work in the packaging department and he produced a workers’ compensation injury report.

The supervisor was suspicious of inconsistencies between the workers’ compensation report and the physician’s earlier medical release. Accordingly, she asked the driver to provide an updated physician’s report. The driver then produced a note that he claimed was written by his physician. After producing the note, he began swearing at the supervisor, who had to ask security to escort him from company premises.

Immediately after the incident, the supervisor telephoned the driver’s physician to verify the authenticity of the medical note. The supervisor was informed that the note was a fake. The supervisor decided to fire the driver for his profane, insubordinate behavior and his forgery of the doctor’s note. The driver then filed for SSDI benefits.

Disregarding the professional opinion of the driver’s own treating physician, an SSA administrative law judge decided that the driver suddenly and coincidentally became totally disabled and completely unable to work the day after he was fired for misconduct. Even though the driver’s treating physician had released him to work without limitation, SSA determined that the driver should not have to look for a new job and should instead receive lifetime SSDI payments after having been fired for swearing at his supervisor and forg-

A federal judge noted that the secretary’s job difficulties were related to a single, particular set of coworkers.

SSA determined that the driver should receive lifetime SSDI payments after having been fired for swearing at his supervisor and forging a doctor's note.

ing a doctor's note.⁴⁰

Insurance Employee Didn't Like Delivering Bad News. An employee of Blue Cross Blue Shield of Kansas worked for the company for two years before being promoted to a correspondent position. Her correspondent work required her to contact policyholders and explain to them why the company was denying their benefits claims.

Soon after beginning her new position, she informed her supervisor that she found it stressful to deliver bad news to policyholders. Accordingly, she asked to be transferred to a different position. The company granted her request by transferring her to a clerk expeditor-prescreening position. However, soon after she began her new job, a supervisor asked her to help with a backlog of correspondent work. The employee refused to perform the correspondent work, stating that it would probably involve stressful phone calls. After allegedly suffering a panic attack caused by the incident, she took a medical leave. After two months of leave, in January 1993, her employer filled her job with another employee.

Although the employee's alleged stress affected only her ability to perform the single job of delivering bad news to policyholders, and although she had proven perfectly capable of performing less stressful jobs, SSA granted her full SSDI benefits. SSA apparently believes that all work in the national economy requires employees to call members of the general public and deliver bad news to them.⁴¹

All Workers Must Shoot to Kill? In May 1992 a special police officer for the Georgia Ports Authority failed to pass a mandatory, two-day firearms proficiency test that was periodically given to all patrol officers. After failing the first day of the test, the officer was offered extra instruction and extra time to practice for the second day. He rejected the offers and subsequently failed the second day of the test. The Ports Authority once again offered the officer another opportunity to pass the test, as well as additional time to practice his shooting. Once again, the officer chose not to practice, and again he failed the test.

The officer took two weeks' vacation and

provided a note from his doctor saying he should perform only sedentary duties. Upon his return he asserted that he had an impairment called "benign essential tremor" that caused him to have difficulty firing his weapon accurately. He requested that the Ports Authority waive its firearms proficiency requirement for him. The Ports Authority, however, refused to waive its requirement and removed the officer from his position. The officer then filed an ADA suit and applied for SSDI benefits.

A federal judge found that the officer was clearly not disabled, even under the lenient ADA standard. The judge noted that the officer's own treating physician explicitly stated that the officer's condition did not at all interfere with performance of any of his job duties. The judge also noted that even if the alleged medical condition affected his ability to fire a gun accurately, such inaccuracy did not preclude him from performing a broad range of other jobs. In fact, the Ports Authority itself invited him to apply for numerous other positions that did not require the use of a firearm, but the officer refused to consider those positions.

Despite the clear evidence that the officer was limited only in his ability to perform jobs requiring him to accurately shoot a firearm, and despite the federal judge's ruling that he was not disabled even under the lenient ADA standard, SSA determined that the officer was totally disabled and unable to perform any meaningful work that exists in the national economy. In this ruling SSA implies that all American workers must be able to shoot to kill before entering the workforce.⁴²

Worker Refused to Perform "Entry - Level" Work. In November 1991 a home security installer for ADT Security Systems fell off a ladder and sustained serious injuries. Five months later he applied for SSDI benefits, workers' compensation benefits, and private insurer disability benefits, claiming he could no longer perform the functions of a security system installer.

While medical evidence suggested that the installer indeed could not return to his old

job, a physician concluded that he was still qualified for several other positions with the security company. The employer then invited the installer to explore a number of jobs, including those of emergency dispatch operator, field operator, field support specialist, customer service representative, and safety trainer. The installer refused, claiming that he would not fill what he considered to be “entry-level” positions.

The installer later filed an ADA complaint, claiming that he was being discriminated against because of his disabilities, despite the fact that his company had offered him several positions for which he was qualified. He subsequently worked as a part-time truck driver for another employer, clearly demonstrating his ability to work.

The SSA initially turned down his request for SSDI benefits but, remarkably, later agreed to classify him as disabled. Thus, despite medical evidence that the installer could still perform any number of jobs, despite the employer’s offer to give him his choice of several positions, and despite the installer’s subsequent work as a truck driver, SSA determined that he was completely unable to work and granted him full SSDI benefits.⁴³

Worker Fired after Exposing Herself in the Workplace. A textile worker for Stowe-Pharr Mills worked in a plant that had wooden floors. She requested and, in February 1994, received a transfer to a different plant that happened to have concrete floors. Eventually, she was fired for misconduct and absenteeism. She then filed a discrimination suit under the ADA and applied for SSDI benefits.

In her ADA suit, the worker alleged that she had a number of minor ailments that cumulatively made it difficult for her to work on concrete floors. She claimed, however, that she had no difficulty working on wooden floors. Accordingly, she asserted that her employer should have accommodated her minor ailments by transferring her back to her initial work site before firing her.

However, a federal judge ruled that the employer was not required to transfer the worker back to her old job because she had

engaged in misconduct with other coworkers there, as well. Specifically, the worker had revealed her bare buttocks to other employees to show off one of her tattoos. “The ADA does not require an employer to ignore employees misconduct and/or poor performance when making job assignments,” noted the court.

Despite the evidence that the worker was fully capable of working any job that did not require prolonged standing on a concrete floor, despite the fact that she might have obtained just such a position if not for her own misconduct, and despite the fact that she admitted to being qualified to work, SSA granted the worker full disability benefits.⁴⁴

Accused Sexual Harasser Ruled Socially Disabled. After receiving two separate warnings about sexual harassment complaints, an employee at IBM told his superiors that he had depression and that the employer’s warnings had aggravated his condition. The employee claimed that he could still perform his job but said that his employer should be careful about issuing future reprimands and the employer should ensure that he was assigned to only eight-hour shifts. Following this, he successfully performed his job for another seven years.

The employee eventually claimed that other employees, who were all required to work 12-hour shifts, came to resent his abbreviated work schedule and would rarely talk with him. As a result, he claimed that his workplace was too stressful, and in January 1995 he stopped showing up for work. He then filed for SSDI benefits.

Although he had worked successfully for seven years after being warned about sexual harassment complaints, and although he had simply alleged that he could not work in a particular environment with particular coworkers, SSA ruled that the employee was unable to perform any meaningful work. SSA granted him full SSDI benefits, ignoring the sexual harassment issue that seemed to be the real basis of his workplace problems.⁴⁵

Retail Clerk Awarded Benefits after Claiming His Car Wouldn’t Start. When applying for a

The worker had revealed her bare buttocks to other employees to show off one of her tattoos.

The employer learned that the packer was abusing his leave privileges and asked him for an explanation.

retail sales position at a Wal-Mart store, a clerk indicated that he had undergone back surgery several years before. Nevertheless, he demonstrated that he was fully capable of working, and he was hired and subsequently worked in the store's sporting goods and hardware departments. At one point he reinjured his back, and his employer accommodated him by exempting him from heavy-lifting tasks.

After successfully working in the store for two years, the clerk took a scheduled vacation. When he was due to return to work, however, he claimed that he was having car trouble and couldn't return that day. The same events occurred day after day, with the clerk repeatedly calling in and claiming that he could not return from his vacation that day because of car troubles. When the clerk finally returned from his vacation in October 1992, he was fired for his extended absence.

The clerk immediately filed for SSDI benefits, claiming that he was totally disabled and unable to work because of his prior back surgery. At the same time he filed an ADA complaint, admitting that he was fully capable of working. Initially, SSA rejected his disability claim. However, an SSA administrative law judge chose to overlook the documented reason for the clerk's termination and instead concluded that "his work ended at that time due to exacerbation of his back pain and depression." SSA granted the clerk full SSDI benefits, despite his empirical work history and his own admission that he could work, and instead required American workers to pick up the tab for yet another extended vacation.⁴⁶

Factory Worker Had Minor Hand Irritation. An assembler at Midland Brake, Inc., claimed that he suffered dermatitis (a skin irritation) on his hands due to his exposure to certain chemical irritants in his workstation. As a result, he obtained a physician's recommendation that he cease working at his particular station. He took a leave of absence and then filed an ADA suit and applied for SSDI benefits.

While litigating his ADA suit, he admitted that he was fully capable of performing a variety of jobs for his employer. He further assert-

ed that his physician would have approved his return to work in many of those positions.

Despite his admission that he could perform a variety of jobs, and despite the fact that few jobs require close contact with the specific chemicals at his workstation, an SSA administrative law judge determined that the assembler was totally disabled and unable to perform any meaningful work. Amazingly, in October 1992 SSA granted him full disability benefits.⁴⁷

Packer Fired for Abusing Work Leave. A meat packer at IBP Inc., alleged that he hurt his hand at work. A physician recommended that he be placed on temporary light-duty work and prescribed physical therapy. Accordingly, IBP granted him time off from work for his scheduled therapy sessions.

However, in the first two weeks of his scheduled therapy, the packer missed five separate appointments. Moreover, he did not inform his employer that he was skipping the appointments but continued to take time off from work for his scheduled sessions.

Eventually, the employer learned that the packer was abusing his leave privileges and asked him for an explanation. He provided a questionable excuse involving alleged car troubles, and in March 1993 his employer fired him.

Even though the packer clearly did not consider his hand very injured, and even though he was fired solely for his alleged misconduct, an SSA administrative law judge ruled that he was totally disabled and precluded from engaging in any meaningful work. The packer's minor hand impairment suddenly and coincidentally became totally disabling and rendered him completely unable to work, ruled the SSA judge, immediately after the worker was fired for his alleged misconduct.⁴⁸

Full Benefits for Personality Conflict with Particular Supervisor. The Quantum Chemical Corporation employed a factory worker for about nine months before the worker complained that his supervisor was harassing him. The worker thereafter visited a psychiatrist because of the alleged stress of the situation and in September 1992 checked himself into a

hospital for depression.

The psychiatrist determined that the worker had “much difficulty with his supervisor” and recommended that the company transfer the worker to another supervisor. When the company refused, the worker quit his job, sued under the ADA, and filed for SSDI benefits.

The federal judge who heard the worker’s ADA suit found that he was clearly not disabled, even under the lenient ADA standard. The judge observed that the worker and his treating psychiatrist both stated that he could work in other environments with other supervisors. The judge further noted that the worker “can perform all of the activities required of a plant technician; he just doesn’t want to do them around his supervisor. . . . His inability to work under a particular supervisor simply is not a substantial limitation on working. . . .”

Nevertheless, SSA determined that the worker was totally disabled and unable to perform any meaningful work that exists in the national economy. On the basis of a single personality conflict with one particular supervisor, SSA handed out full SSDI benefits.⁴⁹

Employee Could Refuse “Demeaning” Cash Register Job. A deli employee at a Hy-Vee grocery store fell down at work and injured his back. After receiving back treatment, his treating physician released him to work without any restrictions. The employee, however, visited another physician and obtained a note stating that he should not lift more than 20 pounds or stand for more than 15 minutes at a time. The grocery store offered to accommodate those restrictions by providing him with a stool and having him work at the cash register. However, the employee did not want to work a “demeaning” cash register job. He quit his job, filed an ADA discrimination suit, and filed for total disability benefits under SSDI.

The federal district judge who heard the ADA case in April 1997 ruled that the employee was not significantly limited in his ability to work, even under the lenient ADA standard. Indeed, his own treating physician had con-

cluded that he could work without restrictions. Moreover, even if the employee could discredit the conclusions of his treating physician, his subsequent work restrictions precluded him from only a narrow range of jobs.

Despite the conclusions of the employee’s treating physician, the conclusions of the federal district judge, the fact that the grocery store offered him employment consistent with his alleged restrictions, and the inescapable truth that not all jobs require employees to lift more than 20 pounds or stand for long periods of time, SSA ruled that the employee was totally disabled and incapable of performing any meaningful work and granted him benefits.⁵⁰

Employee Precluded Merely from Working Overtime. An employee of the City of Prairies Village, Kansas, became embroiled in personality conflicts and job-performance disputes with his supervisors after he testified against the city in an arbitration hearing. Subsequent to his testimony, the city documented that the employee was occasionally insubordinate and that he frequently did not complete his assigned work. The employee countered that the city was simply out to get him because of his adverse arbitration testimony.

While relations between the employee and his supervisors were breaking down, the employee presented a note from his doctor stating that he should “generally limit himself to a forty hour workload” because he “becomes overstressed and consequently less productive” when working overtime.

Eventually, in January 1994, the city eliminated the employee’s position during a reduction in force. He promptly filed for SSDI benefits, claiming that his overtime restrictions rendered him disabled. Incredibly, SSA granted him full disability benefits, suggesting with that decision that the worker’s aversion to working overtime rendered him totally disabled and unable to perform any meaningful work that exists in the national economy.⁵¹

SSA Rejects Medical Evidence, Rules All Jobs “Unduly Stressful.” A telecommunications technician worked for AT&T for 10 years, during which time he occasionally suffered

The employee did not want to work a “demeaning” cash register job.

A federal judge ruled that the technician was not disabled, even under the lenient ADA standard.

from depression and stress disorders. Eventually he took a medical leave of absence but returned to work when a supervisor promised that he could provide the technician with a supportive work environment.

The technician had performed his job successfully after returning to work. However, he and his supervisor were both eventually reassigned to other company positions. After he had a personality conflict with a new coworker, the technician left his job, filed an ADA suit, and applied for SSDI benefits.

A federal judge ruled that the technician was not disabled, even under the lenient ADA standard. Although he could not perform “unduly stressful” jobs, he was still capable of performing a broad range of jobs in a wide variety of work environments. Indeed, he had worked successfully over an extended period of time before he opted out of his particular work assignment.

Despite the technician’s extensive work history, and despite the clear finding of the federal court, in September 1992 SSA granted him full disability benefits. Although he did have a history of depression, his depression manifested itself only in “unduly stressful” work environments with particular coworkers. Further, disability advocates uniformly and reasonably urge that employers, government officials, and others not stereotype or speculate about a person’s abilities or inabilities on the basis of that person’s past medical history. Rather, disability advocates, and the applicable federal statutes, demand an individual inquiry into each person’s particular circumstances. Where, as here, the available medical evidence and the claimant’s own testimony demonstrate that the claimant is fully capable of performing meaningful work, it is entirely improper for SSA to assume that the person is incapable of working simply because he suffers from a given impairment.^{5 2}

Manager Knew Axe Was About to Fall. In 1979 a manufacturing engineer manager with a history of phlebitis at Hartmann Luggage Company was diagnosed with an abnormal vein condition. His condition mar-

ginally affected his ability to work, typically causing him to miss only a day or two of work per year. After his diagnosis, he successfully worked for 15 years with a single employer, with only rare and brief absences from work.

In 1995 the manager and the employer’s vice president of manufacturing began disagreeing about a number of work production issues. The vice president called a meeting with the manager to discuss his “negativism in regard to interpersonal relations with both supervisors and subordinates.” The vice president prepared a concurrent memorandum stating that the manager was not supporting the employer’s manufacturing mission, was undermining the vice president, and would be removed from his position if his negative attitude continued.

Soon thereafter, the manager and the vice president had another serious disagreement after the vice president decided to increase the salary offer to an applicant for an engineer position. On the night of the disagreement, the manager told his wife that he might be fired because of the dispute. His intuition was correct because the next morning the vice president prepared a memorandum recommending the manager’s termination.

Knowing that he was about to be fired, the manager did not go to work the day after the argument. Instead, he went to see his doctor. For the first time in roughly 15 years of employment, he obtained a doctor’s note recommending a one-week medical leave.

After his one-week leave expired, the manager returned to work. When he arrived at work, however, he was advised that the vice president wanted to see him. Before the vice president could meet with him, he requested additional medical leave. Thereafter, he repeatedly renewed his medical leave and eventually applied for SSDI benefits. He also filed a discrimination suit under the ADA.

In the context of his ADA claim, the manager alleged that his vein impairment made it difficult for him to stand and walk. Nevertheless, a federal judge firmly rejected the manager’s assertion that he was disabled, even under the

lenient ADA standard. “The plaintiff’s condition clearly does not prevent him from working, as he held the position as an engineer for several years after being diagnosed with his impairment,” stated the court.

Moreover, the judge noted that the manager accepted an offer to manage a convenience store shortly after filing his discrimination claim. In this new position, he spent approximately 30 percent of his time walking around the workplace. Therefore, he had “no basis for arguing that his condition substantially limits his major life activity of working,” ruled the court.

Despite the manager’s impressive pre-termination job attendance and his ease in obtaining subsequent managerial work, SSA ruled that he was totally disabled and completely unable to perform any meaningful work. SSA granted him full SSDI benefits, even as he proved that he could still work.⁵³

Insurance Agent Could Not Talk on the Phone All Day. A claims specialist for State Farm Mutual Insurance Company, who had worked for her company for 24 years, in 1994 was diagnosed with a respiratory ailment that prevented her from prolonged speaking. Her treating physician stated that she could continue working but recommended that she not talk on the phone for more than three hours per day.

The claims specialist could not continue in her position because it required her to talk on the phone for about 90 percent of her workday. However, she did not inquire about other jobs within her company, in part because she refused to take a salary cut. When she refused to consider other company jobs, she was terminated.

She applied for long-term disability benefits through CIGNA, a private insurer. Not surprisingly, the insurer and her treating physician concluded that she was qualified to perform numerous other jobs. Accordingly, the insurer denied her benefits application.

The claims specialist then filed for SSDI benefits. Even though the private insurer and her own treating physician had concluded that she was employable, SSA ruled that she

was totally disabled and unable to perform any meaningful work.⁵⁴

All Jobs Require Exposure to Extreme Heat? A factory machinist for Asarco Inc., had a heart attack but soon thereafter was cleared to work with only a few restrictions. The machinist’s doctor stated that he could not climb stairs, lift more than 50 pounds, work in excessively hot temperatures, or be exposed to noxious gases.

Unfortunately, the machinist worked at a smelter, a piece of heavy equipment used for the high-temperature melting of heavy metals. Therefore he could not continue to perform his particular job under his medical restrictions. His employer did not have a light-duty position available for him.

Clearly, most jobs do not require workers to lift 50 pounds, work in excessively hot temperatures, or be exposed to noxious gases. Nevertheless, in 1992 SSA determined that the machinist’s minor restrictions rendered him totally disabled and unable to perform any meaningful work in the national economy. SSA granted the machinist full SSDI benefits.⁵⁵

Station Manager Works Seven Years While Drawing Benefits. A man had a medical condition that required replacement of both of his hips. After successful surgery, a doctor gave his approval for the patient to engage in most daily activities. His only restrictions were that he could not carry heavy objects or climb stairs.

Despite those very minor physical restrictions, the man filed for and was granted SSDI benefits. SSA apparently found that all jobs in the national economy require employees to carry heavy objects or climb stairs.

The preposterous nature of SSA’s ruling is underscored by the applicant’s work history after he began receiving SSDI benefits. From 1988 until 1995 he contracted to operate a city’s public access cable television station, and during that time he continued to receive SSDI benefits predicated on his inability to work. He described his job responsibilities in operating the station as “everything” from performing physical chores such as taking out the trash to performing administrative

Despite the manager’s ease in obtaining subsequent managerial work, SSA ruled that he was totally disabled.

The applicant contracted to operate a public access cable television station, and during that time he continued to receive SSDI benefits.

duties such as hiring and firing volunteers.

Despite his very minimal medical restrictions and his extensive work history involving all aspects of running his own business, SSA determined that he was completely unable to perform any type of work during the same seven years that he ran all aspects of his own labor-intensive business.⁵⁶

Manager Works Two Years While Drawing Benefits. In 1978 an SSDI applicant who had multiple sclerosis filed a disability report with SSA, claiming that she was unable to work. SSA granted her full SSDI benefits.

In 1993 the applicant and her husband began working as on-site managers for a self-storage facility of the Dahn Corporation. The couple performed their managerial jobs for more than two years before they were fired. The applicant then filed an ADA complaint, which a court ultimately rejected. Despite her proven ability to engage in productive work, she continued to receive uninterrupted SSDI benefits, even during the two years that she held her management position.⁵⁷

Probation Officer Kept Working, Drew Benefits Anyway. A Delaware probation officer suffered two heart attacks in 1990. He recovered and returned to his job shortly after the attacks. He then worked for two years without any medical difficulties.

After participating in a discrimination complaint against his employer, however, the probation officer began experiencing problems with his supervisor. The supervisor observed that a doctor's note in the probation officer's file said he could work only four hours per day, even though he was, in fact, working full-time. She asked the officer to have the doctor update the medical evaluation, which the officer would not do. During a subsequent sick-leave day, in June 1992, the supervisor fired the officer.

In March 1991, after he had returned to work but well before he was fired, the officer applied for SSDI benefits. He was approved for those benefits in December 1991, while he was still working and before he lost his job. In determining that the officer could not perform any type of meaningful work that exists

in the national economy, SSA apparently dismissed the fact that the officer was at that very time performing his job without difficulty.⁵⁸

Sales Representative Limited to 10 Work Hours per Day. A sales representative for the Kerr-McGee Corporation traveled frequently and worked extended hours servicing her sales territory. After performing her job for five years, she was diagnosed with lupus. Because of her diagnosis, her doctor restricted her to 10-hour workdays.

Soon thereafter, the sales representative was transferred to a new supervisor. A personality conflict developed between the two, and the sales representative subsequently alleged that her supervisor was harassing her. Her supervisor, in turn, alleged that the sales rep was being insubordinate. Ultimately, in October 1993, the company fired her for failing to follow her supervisor's directives.

Immediately upon her termination, the sales representative applied for SSDI benefits. Her only medical restrictions were that she could not work more than 10 hours per day and that she should have a restful daily lunch break. After turning her down twice, SSA granted full disability benefits, implying that all jobs in the national economy require employees to work more than 10 hours per day without a meaningful lunch break.⁵⁹

Stockbroker Never Required Vision Treatment. In 1993 a stockbroker was involved in an automobile accident. He alleged that, as a result of the accident, he had vision difficulties. Nevertheless, he continued to work 12 hours per day, five days per week, and he never felt the need to seek medical help.

Two years later, the stockbroker broke his ankle while exiting a train. His ankle healed, but he nevertheless applied for SSDI benefits, in addition to filing a civil suit against the Long Island Railroad.

In adjudicating the broker's civil case, a federal judge noted that the broker was not disabled. Evidence showed that he (1) had never sought any rehabilitation for his alleged eye impairment; (2) had continued to work without difficulty, despite his alleged eye impairment; (3) had substantially recovered

from his ankle injury; and (4) was able to run, bike, climb ladders, perform household chores, and perform electrical work and other tasks, in spite of his alleged impairments.

Despite the accumulated medical evidence, the stockbroker's continued work history, and the findings of the federal court, SSA determined that the stockbroker was totally disabled and unable to perform any meaningful work in the national economy. Incredibly, a simple broken ankle and a dubious, minor eye impairment entitled him to cease working and draw lifetime payments from Social Security reserves.⁶⁰

SSA Rejects Whole Team of Doctors. A machine operator claimed to experience several medical ailments during her 15 years of work at a printing and publishing facility of E.I. DuPont. After she was terminated from her job, in February 1994, she contested her employer's decision to deny her disability benefits.

A federal judge upheld the employer's finding that the machinist was not disabled. The judge noted that three separate doctors explicitly concluded that she was fully capable of working, two other doctors explicitly concluded that she did not suffer any significant medical problems, and another doctor explicitly stated that she suffered from only temporary impairments.

Despite the conclusion of a federal judge and six doctors that the machinist was not precluded from working, an SSA administrative law judge determined that the machinist was totally disabled and incapable of performing any meaningful work. SSA rejected the findings of the entire team of doctors and instead granted the machinist full disability benefits.⁶¹

Inspector Disabled the Moment He Was Fired? The town government of Roselle, Illinois, hired an individual with diabetes as a building inspector. Prior to starting his new position, and indeed throughout the entire time that he worked thereafter, the inspector had no trouble controlling his condition. He consistently received good reviews at work.

After being employed for several years, the inspector suffered a heart attack. He missed a month of work and, upon returning to his job, was told that he would be fired for incom-

petence unless he chose to resign because of ill health. He insisted that his health did not prevent him from working, and he refused to resign. Thereafter, he was fired.

Even though he had insisted that he was fully capable of working after his heart attack, and even though he had always successfully controlled his diabetes, the inspector applied for SSDI benefits. Because he had recovered from his heart attack, he based his SSDI claim on his diabetic condition. At first, SSA deferred to the inspector's empirical work record and his insistence that he could still work and thus denied him benefits. Subsequently, however, SSA reconsidered and, in May 1994, declared him disabled by diabetes from the date of his heart attack.

In so ruling, SSA ignored the fact that the inspector had always controlled his diabetes and, by his own admission, had recovered from his heart attack. While the inspector may have had a valid ADA claim against his employer for refusing to let him return to his job, he certainly seemed to be precluded from SSDI benefits by his long-standing ability to control his diabetes, by his work history, and by his insistence that he could still continue to work.⁶²

Disproven Science Good Enough for SSA A probation officer for Hennepin County, Minnesota, claimed that she had "chronic fatigue syndrome" and "multiple chemical sensitivity syndrome." After taking various forms of leave, she took a medical layoff, which would allow her to keep her salary and seniority if she returned to work within three years, and collected private disability benefits during that time. Just before the three-year deadline, the probation officer claimed that she could work again. However, she maintained that as a result of her "multiple chemical sensitivities" she should be employed in a position in which she would not be exposed to cigarette smoke, building materials, adhesives, glues, epoxies, paints, varnishes, car exhaust fumes, room deodorizers, perfumes, hair sprays, cleaning products, copy machines, or computers. Subsequently, her employer offered her numerous job accommodations and available positions. However, she rejected each of the employer's proposals and instead filed an

Despite the accumulated medical evidence, and the findings of the federal court, SSA determined that the stockbroker was totally disabled.

SSA ignored the overwhelming scientific and legal consensus that multiple chemical sensitivity is not a valid medical diagnosis.

ADA suit and applied for SSDI benefits.

A federal judge threw out the officer's ADA claim because she was not disabled, even under the lenient ADA standard. The judge noted that the theory of multiple chemical sensitivity has failed to gain acceptance within the scientific community and has been repeatedly rejected by the federal courts. As the judge observed, "[F]ederal courts do not consider environmental illness or MCS a scientifically valid diagnosis." Moreover, the court cited specific federal court decisions that "MCS is . . . unsupported by sound scientific reasoning or methodology"⁶³ and "theory underlying MCS is untested, speculative, and far from general acceptance in the medical or toxicological community."⁶⁴ Finally, the court pointed out that even if the probation officer had presented a valid medical diagnosis, she claimed that her condition merely prevented her from doing computer work. The probation officer "has failed to show how minimal computer usage constitutes a significant barrier to employment in the social work and probation fields," explained the court.

Nevertheless, the officer succeeded in obtaining SSDI benefits. Apparently considering itself more medically knowledgeable than the entire scientific and legal community, SSA ignored the overwhelming scientific and legal consensus that multiple chemical sensitivity is not a valid medical diagnosis and instead ruled that the officer's alleged condition rendered her totally disabled and entitled her to full SSDI benefits.⁶⁵

SSA Again Rejects Scientific Consensus. A professor at the University of Arizona also claimed that she suffered from "multiple chemical sensitivity." Like the probation officer, the professor stated that she could not work in the presence of copy machines, computers, carpeting, furniture, paint, perfumes, toiletries, smoke, shoe polish, disinfectants, cleaning products, and clothes washed in scented detergent or fabric softener. University officials offered to transfer her office to a different building and provide other accommodations, but to no avail. The university even allowed her to work at home,

but even so, in October 1995, she stopped performing any of the functions of her position.

As noted above, scientific experts have overwhelmingly concluded that there is no such impairment as "multiple chemical sensitivity." The scientific community has concluded that alleged multiple chemical sensitivities are either highly exaggerated or psychosomatic. Despite the overwhelming consensus of the scientific and medical communities, however, SSA ruled itself more medically knowledgeable and awarded the professor full SSDI benefits.⁶⁶

Mail Clerk Refused Numerous Job Offers. A clerk for *Neodata* magazine's mail-processing department fell down and slightly injured her right arm. The clerk's treating physician concluded that the arm had only a 6 percent resultant limitation, and the physician indicated that the impairment would have little, if any, impact on the clerk's ability to work.

Nevertheless, the clerk took a leave of absence, claiming that she could not perform her customary mail-processing duties. While she was on leave, her employer encouraged her to apply for other vacant company positions that were even less demanding and for which she was medically qualified. The employer arranged for a company nurse to take her on a tour of the facilities and to explain the company's available positions. However, the clerk refused to train for any new positions.

The employer then offered the clerk another position for which she was qualified. The clerk declined that job offer, too, stating that she would be on an out-of-state trip at the time the position opened and that she could not return by the job's starting date. The employer then delayed the job's starting date to coincide with the clerk's schedule, but she never showed up for work. In May 1993 the employer fired the clerk, who in turn filed an ADA discrimination suit and applied for SSDI benefits.

A federal judge dismissed the clerk's ADA suit because she was not disabled, even under the lenient ADA standard. The judge noted that the clerk's own treating physician

described her arm injury as only a minor impairment that would have little effect on her ability to work. The judge further noted that the employer had offered her numerous positions and job-training opportunities for which she was clearly physically qualified. The clerk's decision not to accept the job offers had nothing to do with her minor arm impairment.

Nevertheless, SSA granted her full disability benefits. Notwithstanding the fact that she remained unemployed solely because she refused to accept numerous job offers that met her physical restrictions, SSA determined that the clerk was unable to perform any meaningful work that exists in the national economy.^{6,7}

Secretary Suddenly Gets Arthritis on Day She Is Fired? A secretary-receptionist for the William Powell Corporation was terminated during a reduction in force. Her employer decided to eliminate her position because there was not enough work to justify her job. The secretary had an unquestioned record of satisfactory job performance up until, and including, her final day of work. Immediately upon her termination, however, the secretary claimed that she had arthritis that made it difficult for her to climb stairs. She filed an ADA discrimination suit and applied for SSDI benefits.

Regarding her ADA claim, a federal judge noted that the secretary's alleged arthritis did not at all affect her ability to work. "She acknowledges that her claimed disability did not affect her work, that her doctor did not place any restrictions on her in any way, that she regularly climbed stairs at home, and that she regularly climbed stairs during work and during her lunch break."

On January 8, 1993, 13 weeks after she lost her job, the secretary fell and broke her hip. While that injury may arguably have been serious enough to render her fully disabled (although such an injury is rarely severe and permanent enough to preclude a person from working again), on April 5 of that year SSA granted her full disability benefits retroactive to September 29, 1992, the day she lost her job. The clear evidence was that she was not disabled when her position was

eliminated. Thus, even allowing the most generous interpretation of its actions, SSA jumped the gun by some 13 weeks when it classified the secretary as unable to perform any work in the national economy—a profligate use of Social Security dollars.^{6,8}

Tip of the Abuse Iceberg

Some people may argue that these 43 documented cases of abuse are merely exceptions to the rule and do not indicate widespread abuse. However, there is strong evidence that just the opposite is true. The above-documented abuses likely represent only a very small fraction of the abuse that occurs within the SSDI system.

When SSA grants SSDI benefits, it does not make its awards public. Moreover, SSDI recipients have no incentive to make their awards public. Therefore, a substantial majority of all SSDI awards evade public scrutiny. In fact, just about the only time facts surrounding SSDI awards are made public is when a beneficiary later files an employment discrimination suit under the ADA or similar anti-discrimination statutes.

However, only a small number of SSDI recipients subsequently file such disability discrimination suits. And only some of those ADA suits ultimately make it through the legal system and are presented before a judge or a jury. Of that smaller number of ADA suits that reach a judge or a jury, only some are resolved through a written opinion that makes its way to the public. And of this even smaller fraction of cases that result in a written decision, a still smaller fraction actually references the fact that the plaintiff draws SSDI benefits.

In short, the facts regarding specific SSDI awards are made available to the public in only an incredibly small percentage of cases. Therefore, the above-documented abuses do not even come close to capturing the mass of hidden abuses that occur within the system. In fact, the above-documented abuses represent only the tip of the iceberg of total abuses. To uncover even a few individual cases of abuse in such a minute SSDI sampling

The judge noted that the employer had offered the clerk numerous positions and job-training opportunities.

These documented abuses represent only the tip of the iceberg of total abuses.

would indicate a serious problem with the SSDI system. To have uncovered so many such abuses is downright alarming.

SSA Statistics

The recent flood of abuse within the SSDI program can also be inferred from SSA statistics. The U.S. Bureau of the Census estimates that the nation's overall population grew by just 7 percent between 1991 and 1998.^{6,9} Nevertheless, SSA reports that it granted SSDI benefits to 47 percent more persons in 1998 than in 1991.^{7,0} More startling still, SSA seems to have extravagantly opened its vaults to beneficiaries. Its own numbers show that it paid out 77 percent more money to SSDI recipients in 1998 than in 1991, meaning that substantially more money is suddenly being paid to each beneficiary.^{7,1}

Did America undergo an epidemic of severe disabilities such that 47 percent more people were unable to work in 1998 than in 1991? And even if that somehow were the case, how can SSA logically explain the fact that it handed out 77 percent more SSDI dollars over the same time period? Was America in the 1990s secretly and simultaneously suffering from rampant plagues and hyperinflation?

The simple fact is that in the 1990s SSA awarded more SSDI benefits to more people, and in higher dollar amounts, than could logically be anticipated, or can logically be explained, by socio-economic factors. However, the fleecing of Social Security can be more readily traced through an examination of ideological, bureaucratic, and political motivations within the system that have continued unchecked since the early 1990s. Without effective oversight from outside officials or third-party organizations, SSA may have succumbed to the most base of political instincts.

Catalysts of SSDI Abuse

It is incorrect to assume that SSA has institutional incentives to vigilantly protect its SSDI funds from fraud and abuse. First, government agencies, like any other businesses or quasi-business entities, are constantly seeking revenue increases. However, government

agencies receive their funds from Congress and they rarely receive funding increases while showing stagnant, controllable expenditures. SSA has a disincentive to vigilantly monitor its disbursements, because stagnant expenditures will result in stagnant funding.

Second, political ideology can motivate runaway SSDI awards. The commissioner of Social Security is a presidential political appointee who will usually share the president's political agenda. A president or a commissioner who disagrees with strict statutory SSDI language will be inclined to ignore it. During such administrations, SSA self-watchdog mechanisms are ineffectual. It is no coincidence that SSDI awards have skyrocketed during the present administration.

Third, raw political ambition, irrespective of political ideology, can motivate an abdication of statutory duty. The more persons who owe their dubious SSDI benefits to a particular person or political party, the more persons can be expected to politically support the distributor of those funds. Simply put, more SSDI recipients equal more votes for derelict administrators.

Fourth, SSA judges are likely to be sympathetic to the sad stories of applicants. Those judges will have no real incentive not to grant relief. The easy thing to do is grant benefits to applicants.

One-Sided Procedural Mechanisms

Added to the incentives for SSA personnel to pass out benefits to those who do not deserve them are SSDI procedural mechanisms that provide applicants with a multitude of avenues for pursuing, contesting, and appealing disability determinations, while providing no avenue for watchdog groups to monitor fraud and abuse.

To begin with, an applicant submits his SSDI claim for an initial entitlement determination. SSA assigns those initial determinations to state agencies but retains control of the determination process. Moreover, SSA reviews individual awards and has the power to reject state agency determinations.^{7,2} If SSA approves an award of benefits at the initial determination stage, there is no entity that

reviews or challenges the award. However, if an applicant is denied benefits in the initial determination, he may request reconsideration through a special reviewing official.⁷³

In the reconsideration process, the applicant may present a case to a reviewing official who was not involved in the initial determination. If the reviewing official disagrees with the initial denial and instead grants benefits, the award is final and no entity may review or challenge the award. If, however, the reviewing official affirms the denial of benefits, the applicant may request review before an SSA administrative law judge.⁷⁴

If the SSA administrative law judge disagrees with each of the prior determinations and instead decides to award benefits, the award is final and no entity may review or challenge it. If, however, the administrative law judge affirms the earlier benefits denials, the applicant may request review before an SSA Appeals Council.⁷⁵

If the SSA Appeals Council disagrees with all of the prior determinations and instead decides to award benefits, the award is final and no entity may review or challenge it. If, however, the Appeals Council affirms the earlier benefits denials, the applicant may challenge the determination in federal court.⁷⁶

If a federal court disagrees with all of the prior determinations and instead decides to award benefits, the award is final and no entity may review or challenge it. If, however, a federal court affirms the earlier benefits denials, the applicant may file a petition to reopen the claim and start the entire process all over again.⁷⁷

The end result of these procedural mechanisms is that an SSDI applicant can be ruled fully capable of working by each of four or more separate administrative entities and still receive full disability benefits. If SSA were staffed by individuals committed to upholding the strict language and purpose of the SSDI program, a few unjust awards might slip through the many cracks. But if SSA is staffed by individuals who are hostile to the strict language of SSDI, a flood of abuse predictably results. This is especially

the case because there are few internal or external safeguards to ensure that SSA personnel are abiding by the strict language and intent of the Social Security Act.

Prescriptive Solutions

At minimum, a number of simple procedural changes are necessary to help stem the current abuses of the SSDI system.

First, those SSA officials who make initial eligibility determinations must be subject to independent review and accountability. Officials who consistently ignore the clear statutory language of the SSDI program should be identified and removed from the system. To this end, an independent watchdog entity must be created to ensure impartial administrators. The watchdog must remain independent of SSA and must not be subject to the political, ideological, and bureaucratic agendas that may pervade the agency.

Second, there must be independent oversight and independent review of individual SSDI awards. Currently, every applicant is entitled to challenge an initial benefits denial. An independent watchdog entity should be given similar power to challenge unjustified initial benefits awards. The watchdog entity might be instructed to preserve the privacy of individual SSDI awards, but the entity must remain independent of SSA and must remain unquestionably committed to the eradication of fraud and abuse.

Third, there must be balance in the subsequent SSDI review processes. The applicant alone currently has the right to repeatedly challenge benefits denials through a request for reconsideration, through an administrative law judge, through a special appeals council, and through the federal courts. Including the initial determination procedures, this gives each applicant five separate challenges, plus the right to file a motion to reopen the claim and start the process all over again. Providing applicants with such multiple opportunities to secure benefits is entirely unnecessary; it increases opportunities for

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abuse. Justice for all parties, including every American worker who is forced to contribute to the Social Security system, can be diligently served by limiting the process to, at most, two steps of review. To the extent that a multitude of procedural steps may remain in place, however, an independent watchdog entity should be given the same rights retained by applicants to review and challenge each step of the SSDI determination process.

Fourth, and finally, SSA should be accountable for policy positions that undermine the strict language and clear goals of the Social Security Act. For example, SSA has recently instructed its determinations personnel and its administrative law judges that persons who are fully capable of working should nevertheless be considered completely unable to work and should be awarded full disability benefits if they require simple workplace accommodations.⁷⁸ This policy position totally ignores the fact that the ADA requires all employers to provide reasonable accommodations whenever and wherever disabled persons need them.⁷⁹ Nevertheless, SSA has explicitly stated that it will make all benefits determinations in a make-believe world in which the ADA theoretically doesn't exist. Such a position clearly and completely undermines the statutory language and the compelling goals of the SSDI program.

Costs of Continued Abuse

The social and financial costs of SSDI abuse are tremendous. When SSA encourages able-bodied persons to claim SSDI benefits, it acts to defeat the interests of disabled and nondisabled persons alike.

When persons who are fully capable of working tap into SSDI, resources are drained from persons with truly disabling conditions. As abuses continue to undermine the program's solvency, politicians are forced to either raise Social Security taxes or slash individual benefits awards, or both. The end result is that persons who are truly unable to work receive fewer benefits as a result of fraud and abuse by others.

Moreover, SSDI benefits are disbursed from the same general Social Security funds as are retirement benefits. When persons who are capable of working are encouraged to tap into SSDI, the government is forced to slash the benefits of retired Americans.

The cumulative financial results of such widespread abuse are that the Social Security system faces bankruptcy before today's college graduates can expect to retire and that the solutions, if any, imposed by the federal government are likely to be painful and costly and would fail to address a core reason for Social Security's impending insolvency. Some or all of those painful solutions would be unnecessary if simple mechanisms were put in place to control SSDI abuse.

Notes

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3. Ibid.; and U.S. General Accounting Office, p. 16.
4. Social Security Act, 42 U.S.C. § 423 (1935).
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6. "Social Security Disability Benefits," Social Security Publication no. 05-10029, May 1996; and Social Security Act § 1382c.
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9. Ibid., p. 10. See also "Factsheet: Providing Medical Evidence to the Social Security Administration for Individuals with Chronic Fatigue Syndrome; A Guide for Health Care Professionals," Social Security Publication no. 64-063, n.d., p. 1, <http://www.ssa.gov/odhome/cfs-facts.htm>.
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12. Code of Federal Regulations for Social Security, 20 C.F.R. §§ 404.1520, 416.920 (1986).
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 23. *Simon v. Safelite Glass Corp.*, 128 F.3d 68 (2d Cir. 1997).
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