E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

29-Aug-1995 05:34pm

TO: Molly Brostrom

FROM: Melissa Y. Cook
Office of Mgmt and Budget, LRD

SUBJECT: Per your request NEC's comments on SSA Attny Fee Proposal

Please note that we have passed back to SSA on this proposal asking them for additional analysis about the fee cap. Please let me know if I can be of further assistance.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

09-Aug-1995 06:51pm

TO: Melissa Y. Cook

FROM: Ellen S. Seidman
National Economic Council

CC: Paul R. Dimond
CC: Gene B. Sperling
CC: Elena R. Mccoy

SUBJECT: NEC objections to LRM 2193

This LRM, proposed by the Social Security Administration, would revise the system for payment of attorneys representing claimants in Social Security, SSI and Black Lung administrative proceedings. Currently, SSA in essence runs an administrative procedure on the legal fees, and can authorize fees that are unlimited except that they must be "reasonable." The proposal would eliminate the administrative procedure on the fees, and instead set a cap of $2500, which is slightly more than the average fee paid in 1994. (The cap would be "adjusted periodically by the Commissioner.")

While we understand the desire to eliminate what are undoubtedly costly and time-consuming fee hearings, we don't think this is the right time or the right solution.

First, as to timing. We are in the middle of a major budget fight in which it is absolutely critical that all vocal members of the elderly and disabled community support us. This bill can easily be played by some of those most vocal members (i.e., the lawyers) as "continuation of the Reagan-Bush efforts to use procedural methods to deprive people of their benefits." We don't need that now.

Second, as to the solution. A flat maximum fee is likely to generate a situation where lawyers in the easy cases are overpaid while hard cases are not taken by private attorneys because they cost far more than $2500 to bring to a successful conclusion. Given what's happening to legal services resources, this is no time to increase the burden on that system. The fact that 46% of the fees paid in 1994 were more than $2500 suggests that the average is not a very good cap.

Frankly, we don't have a really good alternative proposal, although at the very least there should be some mechanism in the hard cases to petition for a fee greater than $2500. However, the major point of our objection is that this is not the time to take any risk of turning a part of this community against the Administration.

We would be happy to work with SSA (or anyone else who is interested) on an alternative proposal when the current crisis passes.

Ellen Seidman and Paul Dimond

Example of distinction between past-due benefits and retroactive benefits:

The first month of entitlement for the wage earner (HA) is 1/94;

His claim for disability benefits is effectuated (paid) on 7/95;

Monthly benefit checks begin 8/95;

The past-due benefits period is 1/94 thru 7/95

The attorney can collect fees for this period only. The attorney is not entitled to a fee for any increase in monthly benefits for the period 8/95 and later.

An example of when the retroactive period and the past-due benefits period are different would occur in several situations:

Say for example we assumed a maximum workers' compensation offset for the HA when we paid his claim, pending development of the actual amount. We subsequently receive this information in 11/95 and the amount is lower than we assumed. Therefore the HA is due an increase in his monthly benefits from 1/94 thru 10/95. This amount would be sent to him in a **retroactive check** where the retroactive period would be for 1/94 thru 10/95. However, the attorney is only entitled to collect fees on the increase due from 1/94 thru 7/95 (the past-due period).

Under the same scenario, suppose that HA also had auxiliaries to be entitled on his record:

We do not develop auxiliary claims until we determine the HA is in fact disabled. Therefore, if we effectuate the HA's claim in 8/95 but don't award the auxiliary claims until 12/95, the first check to the auxiliaries would include retroactive benefits due from 1/94 through 11/95. However, the representative would only be entitled to fees based on the period 1/94 thru 7/95.

JUN 21 1995

JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW

Civil Rights and Human Dignity

June 13, 1995

Ms. Sally Katzen
Administrator, Office of Information
and Regulatory Affairs
Office of Management and Budget
Old Executive Office Building
Washington, D.C. 20503

Ms. Elaine Kamarck
Senior Policy Advisor to the
Vice President
Office of the Vice-President
Old Executive Office Building
Washington, D.C. 20501

Dear Ms. Katzen & Ms. Kamarck:

You have generously opened your doors to concerns of the disability community about agency initiatives that may harm people with disabilities. I am writing on behalf of the Social Security Task Force of the Consortium of Citizens with Disabilities about a Reinventing Government (REGO II) initiative that would seriously limit access of Social Security claimants to quality legal representation.

As part if its REGO II process, the Social Security Administration has submitted a proposal to the Office of Management and Budget that would eliminate SSA's role in the determination and payment of attorneys fees in claims arising under Title II of the Social Security Act. Under the current system, where the claimant is represented in a successful appeal, SSA withholds a portion of past due Title II (or Black Lung) benefits, determines an appropriate fee, and then pays the lawyer directly, based on a statutory cap.

The system has a dual purpose: first, by providing a mechanism for payment of fees, it creates an incentive for lawyers to take Social Security cases. In the absence of payment by SSA, lawyers would have no capacity to collect fees because the Social Security Act prohibits transfer or assignment of Social Security benefit payments. 42 U.S.C. §407(a). As a result, the typical contingent fee arrangement -- or indeed any arrangement that allows payment of the fee from a back benefit award -- that assures low income people access to counsel cannot apply to these claims.

1101 Fifteenth Street NW, Suite 1212, Washington DC 20005-5002, (202)467-5730, TDD: (202)467-4232, Fax: (202)223-0409

Ms. Sally Katzen
Ms. Elaine Kamarck
June 13, 1995
Page 2

Second, the system protects claimants by assuring that they are not overcharged by their lawyers.

We do not think the system is broken or in need of repair. There are administrative costs to this system, of course, but the benefits in availability of attorneys and the protection of Social Security claimants is worth the price.

Further, SSA has gone about reform in the worst possible way. The twin goals of making lawyers available and protecting claimants could be achieved, albeit not as satisfactorily as in the current system, through an alternative proposal that also eliminates SSA from the fee determination business. But SSA has rejected that solution for reasons that seem to us to exemplify the very bureaucratic ossification that the REGO II initiative was designed to avoid.

Disability advocates proposed that if SSA wishes to replace the current system, it take two simple steps:

1. Place a reasonable cap on fees. We suggested 25% of past-due benefits as a reasonable fee cap. rather than cap

2. Adopt the payment system most frequently used in litigation involving claims for money by either issuing a check to the lawyer as escrow agent or writing a two-party check to the lawyer and claimant.

We presented these proposals to the Social Security Administration, and explained how the system would both simplify the process and further the goals of access to counsel and claimant protection. In the absence of such a system, reputable lawyers will simply have no mechanism to get paid and thus will not take the cases. Worse, SSA's proposed system is likely to attract unscrupulous claimants' representatives who will charge an up-front flat fee for representation. The potential for rip-off of claimants and ensuing scandal is enormous.

Although SSA never challenged our reasoning, it has nevertheless refused to budge from its proposal to eliminate any significant role for SSA in this process. Most disturbing, it has given us the very bureaucratic response REGO II was supposed to eliminate. In a May 19 letter to me SSA said there was "no systems support for issuing a one-time-only two-party check for retroactive benefits", thus requiring manual, time-consuming processing. In short, instead of proposing a rational solution to a problem, it has retreated to the notion that the very structure of the bureaucracy prevents adoption of a rational solution.

We thought that the very purpose of the reinvention initiative was designed to do away with bureaucratic responses and behavior like this.

Finally, we believe the fee cap SSA proposes is harmful to claimants and an invitation to abuse. The $4,500 cap will quickly become the standard fee, and for small claims will represent a huge percentage (up to 100% in fact) of the past due benefits, compared to the 25% cap now. As representatives of people with disabilities, we seek to assure access to competent counsel, not windfalls for lawyers. Yet that is what SSA is proposing.

I would welcome an opportunity to meet with you about this very distressing proposal from the Social Security Administration.

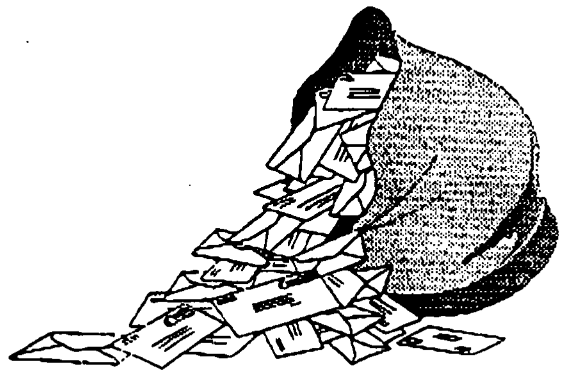
Sincerely,

Leonard S. Rubenstein

cc: Debbie Fine

OFFICE OF MANAGEMENT AND BUDGET

Legislative Reference Division
Labor-Welfare-Personnel Branch
Telecopier Transmittal Sheet



FROM: Melissa Cook PHONE: 395-3924

DATE: 9/28/95 TIME: ______________

Pages sent (including transmittal sheet): 4

COMMENTS:

Per our conversation

TO:

Molly Brostrom

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

August 9, 1995

To: Melissa Cook, OMB

From: Velma Taylor, DOJ VT

Re: **Social Security Administration Proposed Draft Bill - "Eliminate Representative Fee Authorization Process and Direct Payment of Fees to Attorneys."**

The Department of Justice has no objections to the merits of this proposal. However, especially given the likely opposition to the merits, there are several ambiguities in the bill and supporting papers that ought to be ironed out.

1. The supporting documentation argues that "retention of an administrative statutory fee cap would protect claimants against excessive fees and permit representatives to charge up to $2,500, which is slightly higher than the average amount of fees SSA paid in 1994 from claimants['] past-due Social Security benefits. Thus, the overall amount of program funds available to representatives would be slightly higher than under the current process" even though the current cap is $4,000. That conclusion might be true, but, if so, it is not adequately supported by the premises set forth by SSA.

Two possibly implicit premises for the conclusion are 1) that the 25% past-benefit cap on administrative fees limits fees to less than $2500 in some cases that would otherwise warrant higher fees and 2) that this bill would eliminate the 25% fee cap in cases that do not reach court. The extent to which the first premise is true is not stated in the supporting documentation.

As to the second, it appears that the bill would eliminate the 25% limitation on fee awards in administrative cases by repealing 42 U.S.C. § 406(a)(2)(ii)(1). However, if so, it is puzzling that the explanation of the proposal would qualify its statement that the "statutory limitation of 25 percent of past due benefits" is eliminated with the phase "on the amount a federal court can award." Does the proposal not also, and probably more significantly, eliminate the same cap on administrative fee awards? The bill's explanation should address this point.

Even if these premises are both true, the accuracy of SSA's conclusion that its proposal would increase the "program funds available to representatives" depends in part on the meaning of its statement that "[i]n 1994, 54% of the fees paid were for less than $2,500." This and similar statements elsewhere in the papers might be read to mean one of several different things:

> 1) that in 54% of the cases in which fees were awarded, the fee award was less than $2,500 (the median award was less than that amount);
>
> 2) the mean, or arithmetical average, award was for less than $2,500; or
>
> 3) 54% of the total fees awarded were awarded in cases in which the award was less than $2500.

These are quite different propositions,[1] and we cannot tell which SSA means to assert. Probably SSA means to assert only the first of those propositions. But only if the second or third assertion is true could it follow that the amount of fees available to attorneys could increase despite lowering the attorneys fees cap from $4000 to $2500 (and even then only if the 25% cap is being eliminated and had in the past held down fees significantly).

It it is accurate to make the counterintuitive assertion that, despite the lower fee cap, the bill would increase funds available to attorneys, SSA needs to do a more thorough job of supporting that point given the likelihood that this bill will be opposed. It it is not accurate, SSA would be better off making the argument on the merits that this reform is justified even though it might slightly reduce the amount of fees available to attorneys on average.

2. The effective date provision of the bill is not altogether clear. In general, the bill applies to any claim "that is initially filed on or after the sixtieth day following the date of the enactment of this Act." However, it then goes on to say that it also applies to "any claim for such benefits filed before such day by a claimant who is not represented . . . in

---

[1] Assume that in 11 cases the fee awards are $900, $1600, $2000, $2000, $2300, $2400, $2600, $3200, $3500, $3900, and $4000. If so, then it is true that in about 54% (actually close to 56%) of the cases the award is for less than $2500. But the average fee award is over $2500 ($2581) and only 39% of the fees awarded were awarded in cases in which the fee award was less than $2500.

connection with such claim before such day." What is the "such day"? The date of enactment? Or the sixtieth day following the date of enactment?

THOMAS DASCHLE
SOUTH DAKOTA

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June 13, 1995

The Honorable Shirley Chater
Commissioner
Social Security Administration
Altmeyer Building-6401 Security Blvd.
Baltimore, MD 21235

Dear Dr. Chater:

I have been concerned to learn that the Social Security Administration (SSA) is considering a proposal to eliminate the withholding of attorney's fees in Social Security Disability Insurance cases (SSDI) as part of its Reinventing Government Phase II initiative. Such a proposal would be ill-advised, and would severely curtail the ability of claimants to obtain legal representation. Because many claimants, already ill or injured, have limited education and personal resources to pursue these claims on their own, their ability to retain a lawyer to help them is extremely important.

As you know, such a proposal would require a change in statute in order to be implemented. I would oppose such a legislative change unless you can provide me with clear evidence that it would not affect the ability of claimants to secure qualified legal representation of their cases.

The evidence appears to point in the opposite direction. The Social Security Administration's own 1988 study of the attorney fee system recommended the substitution of a two-party check for the present withholding mandate of the statute, not the elimination of the entire program. Every attorney I have ever had contact with on this issue, both in the private bar or from legal services programs, has indicated that the attorney fee provisions of SSDI have facilitated representation for SSDI claimants. The lack of adequate representation for claimants in Supplemental Security Income cases, for which SSA does not withhold benefits, is a good indicator of what would happen if withholding were dropped for SSDI cases.

You would be well advised to note that this program has already been "reinvented" by Congress as part of the Omnibus Budget Reconciliation Act of 1990. As a member of the Finance Committee in 1990, I supported this provision, which streamlined the attorney fee process in order to reduce the paperwork and staff resources required by both SSA and by representatives of claimants. This process has worked well, so there is now no need to completely eliminate a successful program that has already been streamlined. With serious reductions being proposed in the funding for the legal services program, this would be a particularly inopportune time to hinder the availability of claimants to secure other avenues of representation.

Reinventing government does not have to mean dismantling it. I would ask that you reconsider this proposal in light of the adverse effects it is likely to have upon claimants for Social Security benefits.

With best wishes, I am

Sincerely,

Tom Daschle

Tom Daschle
United States Senate

United States Senate

SPECIAL COMMITTEE ON AGING
WASHINGTON, DC 20510-6400

July 5, 1995

The Honorable Shirley Chater
Commissioner
Social Security Administration
Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235

Dear Shirley:

I am writing regarding the Social Security Administration's (SSA) initiative under Reinventing Government Phase II (REGO II) to discontinue the approval and withholding of attorneys' fees in Title II cases. Although intended as a mechanism to achieve savings, I am concerned that this proposed change could have negative effects on claimants seeking representation in administrative proceedings.

In eliminating the current payment process, individuals would have to arrange for and fund Social Security representation on their own. While private negotiation is standard practice in securing other types of legal services, I am concerned that this change in procedure could greatly discourage attorney representation for many claimants, in part as a result of the great risk of nonpayment. As you know, this problem already exists for many Supplemental Security Income (SSI) claimants.

Even more frightening, these risks would come at time of major reductions in funding for community legal services. Community legal services are, in fact, already overburdened trying to meet the needs of Title VI claimants. It would be nearly impossible to absorb the population of Title II claimants needing representation.

I share your commitment to eliminating waste through streamlining and cost reduction. It is exactly for this reason that in 1989 I sponsored legislation which directed the current system employed by SSA for the withholding of attorneys' fees. This legislation streamlined the process of payment and negotiation. It also worked to ensure fair treatment of both claimants and attorneys.

It is my hope that you reconsider the elimination of SSA's withholding of attorneys' fees for Title II cases. I believe that recent legislative changes have already worked to make the process of negotiation and payment more efficient. I also ask that you reevaluate the impact such a change would have on individuals with disabilities, those whom the program was established to serve.

Sincerely,

David

David Pryor

DP/apl

RICHARD SHELBY
ALABAMA

COMMITTEE ON APPROPRIATIONS
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United States Senate

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(334) 223-7303

☐ 1118 GREENSBORO AVENUE
ROOM 240 U.S. COURTHOUSE
TUSCALOOSA, AL 35401
(205) 759-5047

May 10, 1995

r. Douglas I Friedman
riedman and Pennington
000-A Southbridge Parkway
uite 210
irmingham, Alabama 35209

ear Mr. Friedman:

Thank you for contacting me regarding the Social Security dministration's (SSA) proposal to eliminate the withholding of attorney ees in Social Security cases. Your interest certainly is understandable.

Under Title II Social Security cases, attorneys are enabled to epresent clients and receive up to 25 percent of the claimant's benefits. his has led to a greater number of claimants receiving their rightful enefits from SSA. However, under one of Vice President Al Gore's inventing government proposals, the collection and distribution of claims ould no longer be handled by SSA. Because many of these claimants may not e able to pay for an attorney directly, this may lead to a greater number f lawyers declining Social Security disability cases. I do not want to eny deserving Americans the opportunity to retain an attorney or to their ight to proper restitution in Social Security cases. As such, I assure ou that I will closely examine this proposal and will keep your views oremost in my mind.

Thank you again for expressing your views. If I may be of future ssistance, please do not hesitate to contact me.

Sincerely,

Richard Shelby

Richard Shelby

RCS/mch

THOMAS J. BLILEY, JR.
7TH DISTRICT, VIRGINIA

CHAIRMAN, COMMITTEE ON COMMERCE

RECEIVED JUL 2 4 1995

Congress of the United States
House of Representatives
Washington, DC 20515-4607

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(703) 825-8960

July 19, 1995

Mr. C. Cooper Geraty
Geraty & MacQueen
1110 Rose Hill Drive, Suite 101
Charlottesville, VA 22903

Dear Mr. Geraty:

Thank you for your letter concerning the proposed changes to the Social Security Administration.

I agree with you that the system as it currently exists is more beneficial than the proposed changes. Vice President Al Gore's REGO II proposal represents further extending the Federal government into excessive rules and regulations. While I recognize the intent of REGO II is the exact opposite, the proposal you have brought to my attention is of concern to me.

Although REGO II can give claimants additional freedom in the contracting of legal services, the measure leaves the system open not only to nonpayment of legal fees, but also to the possibility of increasing the number of fraudulent claims. As I see it, in actuality this proposal may increase costs rather than save the government scarce funds. The fee cap of $4,500 represents the type of government regulation which my colleagues and I are attempting to remove. These caps may be a burden to the legal profession as well as a deterrent to quality representation in Title II disability claims.

The Clinton Administration touts a $80 million saving over five years, but it seems the revisions may cost the taxpayers in the long run. With the possibility of lax representation, and an increase in fraudulent claims, these measures may run counter to the needs of Social Security claimants.

Concerning the establishment of a Federal Social Security Court, I still have concerns about this idea. In a time when the government is being downsized in order to create a more efficient, lower costing government, creating more bureaucracy is not in our interest. Fortunately, the vice president's plan does not include this proposal.

As of now, these proposals have not been translated into legislation, which would be the next step. It is my understanding that this is presently occurring. If and when these issues come before me, I will certainly proceed with your thoughts in mind.

Sincerely,

Thomas J. Bliley, Jr.
Member of Congress

TJBj/bad

TOM HARKIN
IOWA

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COMMITTEES:
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United States Senate

WASHINGTON, DC 20510-1502

June 21, 1995

Mr. Albert Gore
Vice President of the United States
The White House
Washington, D.C. 20500

Dear Mr. Vice President:

I am writing regarding a proposal that the Social Security Administration (SSA) has forwarded to the Office of Management as part of Reinventing Government II (RIGO II). But, first I want to commend you for all your work on the Reinventing Government initiative. You have worked tirelessly and successfully since the beginning of your tenure as Vice President to restructure the federal government so that it better serves the American people.

While supportive of many of the specific aspects of RIGO II the disability community has brought to my attention a proposal by SSA that is very troubling. After careful consideration I find I agree with the disability community and must oppose the SSA's proposal to discontinue the process by which the Agency authorizes, withholds, and pays fees to attorneys who represent Social Security claimants.

Under current law SSA withholds a portion of the retroactive benefits payable to a successful Title II disability claimant for direct payment to his or her attorney. Fee amounts are also regulated and limited. Current law is intended to prevent claimants from being overcharged and also ensure that claimants are able to find competent and qualified counsel to represent them.

I believe that withholding and direct payment of attorney's fees is necessary to ensure the availability of attorney representation for Title II claimants. The importance of a mechanism to assure payment of fees is demonstrated by comparing the rates of private counsel representation in the Title II and

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SIOUX CITY, IA 51101

Title XVI programs. Current law does not require withholding of attorney fees for Title XVI claimants and, therefore, few of these claimants are represented by private counsel. Fortunately, Title XVI claimants are often able to obtain help from legal aid programs. But, given the funding cutbacks in these programs we certainly should not expect that they can absorb Title II cases or adequately assist these claimants.

Admittedly, there are administrative costs associated with SSA involvement in the attorney fee process. But, instead of simply withdrawing from the process I urge that these costs be weighed against the legitimate government interests in ensuring protection and the availability of counsel for claimants.

I also want you to consider all the alternatives. It does not appear that SSA has carefully considered alternatives that have been proposed by the disability community. These proposals may reduce SSA's administrative costs and still achieve the goals of making lawyers available and providing protection for claimants.

The disability community has proposed that SSA issue a check to the lawyer as escrow agent or write a two-party check to the lawyer and claimant. This is similar to the system that is already used in many litigation cases.

The goal of your reinventing government initiative is to make the government more rationale and responsive to the needs of the American people. In my view the proposal to eliminate SSA's role in the determination and payment of attorney's fees conflicts with this goal.

I urge you to reject this proposal put forth by SSA and give full consideration to alternatives put forth by the disability community.

Sincerely,

Tom Harkin

Tom Harkin
United States Senator

ERNEST F. HOLLINGS
SOUTH CAROLINA

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NATIONAL OCEAN POLICY STUDY

April 21, 1995

Dr. Shirley S. Chater
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore,, MD 21235

Dear Dr. Chater:

I have enclosed a letter I have received from Richard J. Paul, Esq., concerning the proposal in REGO II to eliminate the attorney fee program. Like Mr. Paul, I certainly understand the desirability of reducing the time and effort spent by Social Security Administration personnel on processing attorney fees. In addition, many disability claimants are in dire financial circumstances by the time their claims are approved, and I have long objected to withholding from them much needed funds while attorney fees are negotiated. It would seem that Mr. Paul's suggestion of the use of two-party checks would resolve both objections while assuring that attorney fees are paid and deserves consideration.

I would appreciate your reviewing this correspondence and providing me any comments that I can share with my constituent. If further information is needed, please don't hesitate to contact me.

Witn kindest regards, I am

Sincerely,

Ernest F. Hollings

EFH/lsm

OCT 27

October 18, 1995

Mr. Larry O. Denny
4550 Belleview
Kansas City, Missouri 64111

Dear Larry:

Thank you for your letter expressing your concerns about openings for district judges and changes in the functioning of the Social Security Administration under Reinventing Government Phase II.

As you know, the Vice President and I are looking at federal agencies of all sizes in our efforts to make government work better and cost less. My Administration examined the Social Security Administration in this light, and subsequently raised the issue of changing SSA's role in authorizing and paying attorneys' fees.

Since then, we have consulted with many concerned groups and individuals to determine how the proposal would affect claimants' access to legal representation. We believe that we can reduce the SSA's administrative burden while protecting claimants' representational needs. The SSA is now evaluating the questions that have been raised and is working to ensure that the implementation of such a proposal would not adversely affect claimants.

As we work to bring government in line with the needs of today and tomorrow, we are committed to ensuring that people in need continue to have access to the legal services they require.

I appreciate your sincerity and candor, and I'm glad you took the time to write. I assure you that I'll keep your perspective in mind as we work on this issue and seek to fill the district judge positions. You may be interested in knowing that we hope to announce nominations for these positions soon. Meanwhile, I have forwarded your letter to Carol Rasco at the Domestic Policy Council so that she may know of your concerns.

Sincerely,

BILL CLINTON

BC/SEM/JFB/bws (Corres. #2497886)
(10.denny.lo)

cc: Marvin Krislov
cc: w/inc Carol Rasco

LARRY O. DENNY
Attorney at Law
4550 Belleview
Kansas City, MO 64111
(816) 756-5800
(816) 756-3001 FAX

September 11, 1995

William Clinton, Esq.
President, United States of America
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: District Court Vacancies -
Western District of Missouri

Dear President Clinton:

By October, 1992, we had two district judges go on senior status. In July, 1995, we had one more district judge go on senior status.

Finally, this summer, one of those positions was filled. Now we have two vacancies and no word that any candidates have been named to fill these positions.

I regularly practice before the U.S. District Court representing claimants for Social Security Disability benefits. With the exception of one Republican district judge, we lose virtually every case before judges appointed by Reagan/Bush. Appeal of these decisions to the Eighth Circuit Court of Appeals is now a waste of time and paper. Whereas the Johnson/Carter appointed judges of the Eighth Circuit reversed seventy-five percent of Social Security cases, the Reagan/Bush team reverses less than three percent. Due process of law is a faint memory.

Claimants for Social Security Disability benefits must win cases before Administrative Law Judges (ALJ's) because unless they draw one of the few remaining "fair" district judges, they have no chance. However, most of the ALJ's are Republican conservatives who are hostile to claimants.

With the system stacked against the claimants, your appointee, Shirley Chater, proposed in April, 1995, to eliminate the withholding of attorney's fees for attorneys successfully securing benefits for a Social Security Disability claimant. The back pay would be sent directly to a claimant and the attorney would hope the claimant would pay the attorney.

Unfortunately, by the time a claimant receives his/her back pay, he/she has usually waited two to three years without any money, and is deeply in debt and therefore, fails to pay attorney's fees.

This is the current situation in SSI cases, and as a result, claimants have a great deal of difficulty hiring an attorney.

Shirley Chater's first proposal sought only to eliminate the withholding of attorney's fees. It was a thinly veiled attempt to eliminate the representation of claimants by attorneys.

Now she has gone further in her attempt to deny claimants representation, and now seeks to eliminate the withholding of attorney's fees from a claimant's back pay and to reduce the maximum attorney fee from $4,000.00 to $2,500.00.

This will certainly save the government money. Claimants will not be able to obtain representation by attorneys and unrepresented claimants will be less successful in obtaining benefits. If this is your goal, you will be successful.

This was not the situation I expected when I hosted parties for your election, gave money and campaigned for all my clients to vote Democratic.

We need two new District Court judges immediately appointed to the Western District of Missouri.

We need Shirley Chater to withdraw her ill-conceived change in attorney fee payments for Social Security Disability attorneys.

Until we get these changes, I am requesting that your re-election committee stop contacting me for money.

If I wanted a Republican president, I would have voted for Bush.

Your policies are making this liberal Democrat strongly consider a third party.

Very truly yours,

Larry Denny

Larry O. Denny

LOD:kdc

October 19, 1995

27

Mr. Denver L. Thornton
410 North Jackson
El Dorado, Arkansas 71730

Dear Denver:

Thank you for your thoughtful letter. I'm glad you took the time to express your concerns about changes to the Social Security Administration under Reinventing Government Phase II.

As you know, the Vice President and I are looking at federal agencies of all sizes in our efforts to make government work better and cost less. My Administration examined the Social Security Administration in this vein and subsequently raised the issue of changing the SSA's role in authorizing and paying attorneys' fees.

Since then, we have consulted with many concerned groups and individuals to determine how the proposal would affect claimants' access to legal representation. We believe that we can reduce the SSA's administrative burden while protecting claimants' needs. The SSA is now evaluating the issues that have been raised and is working to ensure that the implementation of such a proposal would not adversely affect claimants.

As we work to bring government in line with the requirements of today and tomorrow, we are committed to ensuring that people in need continue to have access to legal services.

I know this issue is important to you, and I have passed along your letter to Carol Rasco at the Domestic Policy Council as well. I send my best wishes.

Sincerely,

BILL CLINTON

BC/SEM/JFB/bws-emu (Corres. #2471198)
(10.thornton.dl)

cc: w/inc Carol Rasco, DPC

LAW OFFICES
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MALVERN, AR 72104
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August 18, 1995

95 SEP 11 P3:38

The Honorable Bill Clinton
President of United States
The White House - West Wing
Washington, D.C. 20500-2000

Re: Social Security Reform - REGO II

Dear Mr. President:

The Social Security system has unfortunately become the safety net for the defunct Workers' Compensation system in America.

I am stunned by reported recommendations of your people involving REGO II. If half of the rumors are true, we should call it "REAGAN II."

The Reagan Social Security revolution was brutal. However, the people were saved by the "System", i.e., Judges and Courts. It is rumored that some of your people are suggesting:

(1) Eliminate the Social Security Administrative Law Judges;

(2) Eliminate the Appeals Council review;

(3) Eliminate the attorney by attorney's fee cap of $2,500; and

(4) Non-protection of attorneys' fees - DIB cases.

Even the Reagan group put the attorneys' fee cap at $3,000 and the Congress raised it to $4,000. We still lose a lot of money by the cap but, nevertheless, the $4,000 cap is acceptable.

Mr. President, election time is near. What do I tell the people of South Arkansas and North Louisiana? While you may be out in the rose garden conducting business and having tea, Sam Boyce and I will be out in the bush, nose-to-nose with the electorate.

Let me assure you that the electorate is agile, mobile and hostile.

Please advise.

Your friend,

Denver

Denver

Maureen du Jon

Frederick S. "Rick" Spencer

Attorney at Law

409 East Sixth Street
Mountain Home, Arkansas 72653

Fax: 501-424-2539
Telephone: 501-425-6984

September 26, 1995

President Bill Clinton
White House
Washington, DC 20500-2000

Dear President Clinton:

Enclosed you will please find an article which highlights the problems that we are facing as attorneys. It is similar to the article I handed you when in Washington a few months back when you graciously allowed Denver and I to visit with you. It highlights the problems that we are now facing as SSA attorneys from the SSA bureaucrates yet again.

You may remember just a few years back attorney fee legislation was passed that was supposed to get the SSA out of the attorney-fee process. Everyone, including the SSA, wanted the legislation.

Then, during the time I was President of N.O.S.S.C.R., over a year after it effectively was in force, the SSA bureaucrates finally enacted regulations to enforce the legislation. And even to this date, there has not even been sufficient time for all attorneys to get out of practice of filing of fee petitions so that there can be an adequate assessment of the economic benefits of the new law.

Now the very "worse" mumblings coming out of the SSA regulators during the drastic days when Reagan cut so many off the SSA roles in the early 1980's are being suggested - not from the Republicans, but from your Vice-President's staff!!

To make matters even worse, drastic reductions are proposed which would eliminate legal aid availability to indigent persons, and the proposed severe limits in the SSA fee process along with the elimination of legal aid clinics which would affectively eliminate competent attorneys from representing the disabled workers in our State.

As indicated above, the proposals by the Vice-President's Gore "Reinventing Government" Team was the worst suggestions mentioned in the early 80's during the Reagan administration's deregulation process. It is hard to conceive that you will allow these same bureaucrates to cause similar disasters again on a national basis. You were there for the disabled workers in our State in the early 1980's when they "felt the blade" of the practice of wholesale cutting off from benefits the citizens of our State without any basis. Please don't allow your Vice-President to "out republican" republicans!!!

When you were elected, I, as President of my organization, and many of my fellow SSA lawyers nationally, stood for you when you were the "underdog." Your letter recognizing and supporting our organization was read to the organization by myself as President. Now, it appears that we are the "underdog," and it appears to everyone else that your administration is behind the push to eliminate competent attorneys from representing disabled workers. I can't imagine this being true, and I hope that this letter brings your attention to what is going on - hopefully behind your back.

Please continue "to stand in the gap" and protect the indigent and disabled from the same bureaucrats who clearly are enjoying a "feeding frenzy" at the expense of constitutional guarantees to the citizens of our State of the right to competent attorneys to represent them in the complexities of their SSA cases. This does not even consider the failure of these bureaucrates to realize that this impinges on these persons' right to freedom of contract and is yet another regulation intended to help the SSA "have their way" with the citizens of Arkansas who are legitimately disabled.

Thanking you in advance for your assistance in this matter, I remain,

Sincerely,

Frederick S. "Rick" Spencer

FSS:lc
Enclosure

THE NATIONAL LAW JOURNAL

Monday, September 11, 1995

Social Security Fee Proposal Draws Protest

LAWYERS WHO REPRESENT disabled Social Security claimants before the Social Security Administration are fighting a proposed change in the way they are paid their fees. The administration plans to end its practice of withholding attorneys' fees from their clients' awards.

The SSA says the move is part of a plan to streamline its operations, but lawyers say it is a scheme to prevent claimants from having proper representation—and to thin out the SSA's rolls. The attorneys are calling the proposal the strongest attack on claimants' rights since the Reagan administration's "nonacquiescence" policy of ignoring court precedents in determining Social Security disability benefits.

Since the 1960s the SSA has withheld 25 percent of a successful claimant's past-due benefits to be applied to the attorney's contingency fee, which is subject to the agency's approval. It did so because by the time claims have been processed, clients often are deeply in debt, and lawyers are last on their list of creditors. Because the fee-petition process is costly, in 1991 the agency instituted a system under which the attorney and client agree to an automatic fee capped at $4,000 or no more than 25 percent of back benefits, whichever is less.

Useful: *Victor Fusco says he helps weed out frivolous claims.*

On April 10, the SSA announced that, as part of Vice President Al Gore's REGO II, or Reinventing Government, Phase II, it would seek to end its practice of withholding the fee. The commissioner said that "[c]laimants, if they choose, will contract for Social Security representation as they do for any other legal service." In May the agency proposed to cap the fees at $2,500, the only oversight it would exercise. According to SSA spokesman Philip A. Gambino, moving the proposal on to the Office of Management and Budget has been stalled because of a disagreement within the administration about whether that cap is too low.

70

Mr. Gambino said that the issue may be resolved as early as this month and that the SSA would work with the OMB to draft a bill for either fiscal year 1996 or 1997. Both sides in the debate agree that the legislation will be controversial in Congress.

Pruning Claims?

Lawyers say the change will make it virtually impossible to continue representing disabled claimants. They believe the administration wants to cut them out of the picture and cut down the ranks of recipients. The lawyers are victims of their own success in making law and expanding opportunities for claimants during the past decade, they say.

"It's a total attack on the legal profession," said Victor Fusco, of Woodbury, N.Y.'s Scheine, Fusco, Brandenstein & Rada P.C. "And it doesn't come from the Republicans. It comes from the Democrats trying to 'out-Republican' the Republicans."

In fiscal year 1993, the agency decided 2.5 million claims. The legal practice is low-paying but high-volume, and it is not unusual for a law office to take several hundred cases per year.

The SSA's Mr. Gambino said the agency has decided that brokering attorney [illegible] which costs $26 million a year to administer, is not part of its mission. He also said a cap as low as $2,500 will not be unfair because plans are under way to streamline the process so it doesn't take as long: "We disagree that attorneys won't represent these clients. And for those that won't, then they'll get other kinds of representatives."

Proposals Rejected

In its proposal, the administration points out that lawyers are willing to take Supplemental Security Income cases—most involving the indigent disabled—for which the agency does not withhold fees. Lawyers said they do so because many states have their own withholding mechanisms for those [illegible].

Scheine Fusco's Mr. Fusco, whose firm has seven lawyers representing claimants, predicted that the change will force the SSA to hire more screeners—a function, he said, the lawyers now serve.

"They look at us as adversaries, but [my office interviews] 100 people a month and maybe takes 30," he said. "People don't understand the eligibility and earning requirements."

Nancy G. Shor, executive director of the 3,000-member National Organization of Social Security Claimants' Representatives, based in Midland Park, N.J., said her group had proposed that the administration charge the lawyers a fee for the withholding service or issue checks in both the clients' and the attorneys' names—as in contingency arrangements in torts. She said the agency rejected those proposals. —THOM WEIDLICH

Frederick S. "Rick" Spencer
Attorney at Law

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Mountain Home, Arkansas 72653

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Telephone: 501-425-6984

September 28, 1995

President Bill Clinton
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500-2000

Dear President Clinton:

Enclosed you will please find material regarding the proposed elimination of the Social Security Disability Attorney Fee Program which I am sending for your information and review. Please do your best to reign in this horrible move to change the laws just enacted regarding attorney's fees just a few years back.

Thanking you in advance for your assistance in this matter, I remain,

Sincerely,

Frederick S. "Rick" Spencer

FSS:csw
Enclosures

CHRIS A. CORNAGHIE
ATTORNEY AT LAW

1643 MADISON
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September 18, 1995

Nancy G. Shor
Executive Director
NOSSCR
6 Prospect Street
Midland Park, New Jersey 07432

Dear Ms. Shor:

Please find enclosed the resolution passed by the Federal Bar Asssociation on Saturday, September 16, 1995.

Very truly yours,

Chris A. Cornaghie

Chris A. Cornaghie

CAC:cab

Resolution in Opposition to Proposed Elimination of Social Security Disability Attorney Fee Program

Ref. Item 11, TAB F

THE FEDERAL BAR ASSOCIATION

Resolution 95-

OPPOSITION TO PROPOSED ELIMINATION OF SOCIAL SECURITY DISABILITY ATTORNEY FEE PROGRAM

WHEREAS, the Social Security Administration is required by law to administer an attorney fee program as part of its disability benefits system, and

WHEREAS. the SSA has proposed the termination of the attorney fee program as part of the Administration's Reinventing Government effort, and

WHEREAS, the attorney fee program has proved to be effective in insuring that disabled workers receive the benefits they are entitled to under the Social Security Act. and

WHEREAS, without the attorney fee program most claimants will be without competent assistance in pursuing their rights.

NOW THEREFORE BE IT RESOLVED. that the Federal Bar Association opposes the elimination of the attorney fee program: and

BE IT FURTHER RESOLVED. that the president of the Federal Bar Association is authorized and directed to communicate copies of this resolution to the Commissioner of Social Security and to the chairmen of the Senate Finance and House Ways and Means Committees.

Under a provision of the Social Security Act (42 U.S.C. sec. 406), the Social Security Administration approves the fee that may be charged by an attorney to represent a disability claimant in administrative proceedings, and withholds 25% of the claimant's award for direct payment to the attorney.

In April 1995, the SSA proposed to eliminate the fee process because, it says, under the Clinton Administration's Reinventing Government program, the process is not a function that is critical to the agency's mission. And in lieu of the statutory limit of 25% of awards of disability benefits, it proposed a fee cap of $4,500 (since revised to $2,500) for legal services.

Representatives of disability claimants have proposed as an alternative that if the process must be eliminated for cost-cutting reasons, it should be replaced by the issuance of a back award check payable jointly to the attorney and client, or, at least, the check should be made payable to the attorney in trust for the claimant. SSA rejected these alternatives on the ground that "systems and operational modifications would be so expensive that SSA would realize none of the savings the initiative is designed to produce."

As Professor Robert E. Rains has explained in the August 1995 issue of *The Federal Lawyer*, if enacted, the SSA proposal would effectively preclude most disabled workers from obtaining legal representation when SSA denies their meritorious claims. most claimants have been out of work for a considerable period of time before their claims rise to the ALJ hearing level, and cannot afford to deposit a reasonable retainer for legal services, leaving them without professional assistance in a complicated process.

The Senior Lawyers Division urges the National Council to approve the attached resolution opposing the elimination of the fee process.

NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)
6 PROSPECT STREET
MIDLAND PARK, NEW JERSEY 07432

NANCY G. SHOR
EXECUTIVE DIRECTOR

BARBARA R. SILVERSTONE
STAFF ATTORNEY

(201) 444-1415
(800) 431-2804
FAX: (201) 444-1823

September 11, 1995

RE: REGO II Initiative
Social Security Administration
"Eliminate Attorneys Fee Program"

Last month, the Social Security Administration presented to the Office of Management and Budget a package of initiatives as part of the Administration's "Re-inventing Government" efforts. One item in the package is captioned, "Eliminate Attorneys Fee Program." This proposal would effectively end the ability of Social Security claimants to obtain representation from private counsel, at a time when funding for legal services programs will likely prohibit those programs from representing any Social Security and SSI claimants. Under SSA's proposal, it will be easy for the agency to deny claims of unrepresented claimants. The net result is that disabled claimants who are entitled to receive disability benefits never will.

The REGO II proposal is an abdication of SSA's responsibility towards claimants who choose to be represented. First, it sets $2,500 as a maximum fee. Currently, $2,500 is the average fee. How has the agency determined that fees are excessive and should be cut in half? Because there have been so few claimant complaints about fees over the past several years, and because the current system already has a complaint mechanism in place to address them, we assume that the agency envisions that cutting the amount of fees in half will drive highly competent attorneys out of this practice. Unfortunately for claimants, they are quite right. Second, the proposal eliminates the current statutorily-mandated direct payment of fees to attorneys, claiming that administrative costs are excessive. The agency asserts that this will leave claimants in the same position as other consumers of legal services. This, however, is not true. In comparable areas of contingency fee representation (such as worker's compensation and personal injury cases), there is a joint check to assure payment of the legal fee. Note that our recommendation to defray these administrative expenses through the imposition of a "user fee" has been rejected by SSA, leaving us to conclude that the real rationale for this proposal is to drive competent attorneys from this program.

The present attorney fee program, which has most recently greatly streamlined the process since 1989, works very well in preserving access to representation while protecting claimants from being overcharged. Yet we understand that in the current cost-cutting climate, every bureaucratic program is being scrutinized. If a Congressional decision is made to change the present law, we offer a proposal which achieves the twin goals of preserving claimants' access to private representation while virtually eliminating administrative costs.

First, the fee should be no more than 25% of past-due benefits, not a flat fee of any amount. This follows the standard model in comparable legal contingency fee matters, where attorney fees are routinely and widely-known to the public to be a percentage of the claimant's recovery. It is a smaller percentage than the one-third typical in other types of disability claims. Our proposal comports with the REGO II statement, "Claimants, if they choose, would contract for Social Security representation as they do for any other legal service." Claimants can understand at the beginning of representation that the fee will be no more than one-quarter of the amount that they receive. They understand that for every dollar their attorney receives, they will receive at least three. Our proposal has no administrative cost because the process requires the attorney to make the calculation.

Second, we believe that a direct payment mechanism is crucial to the continued ability of claimants to obtain private representation. The process in comparable legal cases, including worker's compensation and personal injury, provides for the issuance of a check, paid jointly to client and attorney, sent to the attorney. The payment mechanism is vital; whether it is accomplished through an electronic transfer directly to the attorney's escrow account, or directly in the appropriate amounts to the claimant's account and the attorney's account, or sent as a joint check to the attorney is a decision to be made on the basis of the least administrative cost. The Social Security Administration's own 1988 study of the attorney fee program recommended the substitution of a two-party check for the present withholding mandate of the statute. If it were deemed necessary, we could accept the imposition of a $20 charge per case to cover the administrative costs of administering a direct payment mechanism; please note that in 1990, the HHS Office of the Inspector General recommended just such a "user fee."

In sum, we believe that SSA has not made a case for an overhaul of the attorney fee system. If there is to be a change, however, our recommendation is the appropriate alternative. It ensures that the right to representation for Social Security claimants is not hollow, but is realistic and meaningful. For most claimants, their Social Security claim is the single most important legal event in their lives. It is not surprising that many claimants will choose, at some point in the process, to have a lawyer. How ironic they would find it if the very agency against whom they are fighting for their benefits is the same agency which erects an obstacle to their obtaining representation for that fight.

The White House
Office of Presidential Letters and Messages

THE WHITE HOUSE
WASHINGTON

Facsimile from Seth Masket
Voice: (202) 456-5514; FAX: (202) 456-2806

No. of Pages (including cover): 4 Date: 6/13/95

To: MOLLY BROSTROM, ODP

Voice: x.6-5561 Fax: x.6-7028

Comments: HERE'S THE LETTER. THOUGH MR. BOYCE IS A LITTLE CONDESCENDING, HE'S APPARENTLY A FRIEND OF POTUS', SO WE'VE GOT TO ADDRESS HIS CONCERNS PRETTY SPECIFICALLY. IDEAS?

BOYCE LAW FIRM

307 MAIN STREET

POST OFFICE BOX 38

NEWPORT, ARKANSAS 72112-0038

SAM H. BOYCE

HENRY H. BOYCE

BETTY BUTLER
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TOLL-FREE 1-800-796-2850

June 7, 1995

The Hon. Bill Clinton
President of the United States
1600 Pennsylvania Avenue
Washington, D. C. 20500-2000

Dear Mr. President:

I am writing because I believe there has been a disasterous misunderstanding in the nature of recommendations made by the Reinventing Government II Committee to Commissioner Chater requesting that the Social Security Administration withdraw from the attorney fee process for Social Security disability claimants.

Please understand that SSA's Rego II is distinct from reinventing government. SSA's Rego II agency team worked only with the OMB/National Performance Review/White House advisory team with no effort toward seeking views from outside the agency. Nor did they seek public input or hold focus groups as indicated in your letter to Rick Spencer on April 27, 1995.

DON'T BE MISLED. The effort to remove the Social Security Administration's attorney fee program is not an attempt to effect a savings by deleting the costs of withholding attorney's fees. Rather it is an attempt to eliminate attorneys from the Social Security practice which would result in millions of dollars lost by disabled voters who cannot afford the services of attorneys and are, therefore, denied benefits.

Susan Daniels, Assoc Comm for Disabil
410/965-3425

President Reagan attempted this precise strategy during the early part of his administration. Through the efforts of your office as Governor as well as Social Security disability attorneys throughout the United States, he was blocked.

true?
⇓
1Kg P3

When I worked for Congressman Mills in the early 1960s, he guaranteed the payment of attorney's fees up to 25 percent of the back check by requiring the Social Security Administration to withhold this amount. (Prior to this time attorney's could only charge a $25.00 fee.) In 1989 David Pryor guaranteed that the Social Security Administration would not reduce these fees arbitrarily by making the 25 percent up to $4,000.00 mandatory under contingent fee contracts.

These reforms were Democratic reforms. We have fought the Republicans and their bureaucratic allies for years to retain and obtain these reforms on behalf of the millions of disabled people who sought aid from Social Security. Without the attorney fee provisions, the disability program will fail to fulfill its legally mandated purpose. Please be aware of the true purpose of the elimination of attorney's fees. Costs of administration of this program are miniscule. Costs of elimination of statutory benefits are enormous, but illegal.

It is pure myth to believe that the Social Security Administration will award full benefits to all legally entitled people without independent representation. Don't reinvent government with the admonishment of "first kill all the lawyers".

Without immediate action on your part, Commissioner Chater will make a recommendation to Congress in the very near future based entirely upon her reliance on SSA's Rego II which Elaine Kamarck of Vice President Gore's office says has been approved by the White House and signed off on by you personally. If in fact you did sign off on this provision, I beg you to reconsider your position in view of this letter which can be substantiated by Congressional studies made by Senator Pryor.

With warmest personal regards, I am

ltrs from Domenici, Mikulski, Muscan

Your friend,

□ A contingency basis

Sam Boyce

SB/bb

SSA: getting out of bus of paying attys fees
use resources elsewhere

NPR: shouldn't need a claimant to file for benefits — SSA making easier to apply, etc.

What does SSA do for S.O. who is mentally incompetent?

ME.

108674

THE WHITE HOUSE

WASHINGTON

April 27, 1995

COPY from ORM

Mr. Frederick S. Spencer
409 East Sixth Street
Mountain Home, Arkansas 72653

Dear Rick:

Thank you for your letter. It was good to see you, and I appreciate knowing your concerns about our efforts to improve the operations of the Social Security Administration.

I regret any misunderstandings there may have been over the recent proposals. I know that the leaders and staff of the Social Security Administration worked hard to take into account the views expressed to them from those outside the agency. Agency staff sought public input and held focus groups to hear reactions to these initiatives. As you may know, several of the proposals, including those involving direct deposit and attorneys fees, will require legislative action to become effective. As these measures move forward in Congress, I hope you will offer your ideas. I have also asked Carol Rasco, my Domestic Policy advisor, to review your letter.

As we work to strengthen the Social Security Administration, I welcome your continued involvement.

Sincerely,

Bill

It was great to see you —

050501

MAY 15 1995

ALLEN GORDON
SENATOR
25TH DISTRICT

P.O. BOX 558
MORRILTON, ARKANSAS 72110

COMMITTEES
CHAIRMAN:
JOINT PERFORMANCE REVIEW
VICE-CHAIRMAN:
JUDICIARY
MEMBER:
STATE AGENCIES & GOVERNMENTAL AFFAIRS
RULES, RESOLUTIONS & MEMORIALS
JOINT BUDGET
JOINT LEGISLATIVE FACILITIES
JOINT COMMITTEE ON CHILDREN & YOUTH

GREAT SEAL OF THE STATE OF ARKANSAS

THE SENATE
STATE OF ARKANSAS

May 10, 1995

Ms. Carol Rasco
Assistant to the President for
Domestic Policy
The White House
Washington, D.C. 20500

Dear Carol:

First of all, I want to offer belated thanks for the role you played in setting up the December meeting in Washington on telemedicine. I know that your schedule prevented you from attending, but I hope your staff reported to you that it was a very enlightening session. As a result of the stimulus provided, Arkansas was able to pass an Act in the recent legislative session to create a standing legislative committee on telecommunications and telemedicine, a Governor's Advisory Board on the subject, and set aside up to $5 million funding to help move Arkansas ahead on this issue. We have had interested people from all over the country call to see what Arkansas was doing on telemedicine, and I feel confident that we will develop as, perhaps, a leading state on that issue. Hopefully, Arkansas and the rest of the states as well, will be able to develop a meaningful federal/state partnership on this issue.

We are currently writing a business plan for Arkansas on delivery of the health care model. It has already been conservatively estimated that we will be able to bring about a $500,000 saving in health care costs. Approximately 25% of that will be in Medicaid alone. Obviously, this is where the country needs to be headed in reform of Medicaid and Medicare. Hopefully, a bipartisan multi-level initiative will evolve in that regard.

I did not intend for the subject of this letter to be about telemedicine. However, I could not pass up the opportunity to pass along some information on that subject. Actually, I wanted to point out a proposed change in Social Security disability which I feel has potential for a dramatic adverse effect upon claimants. I recall when you and I had worked together in 1983 on the reform of the state office of disability determination services. I know that your heart's in the right place on this issue. Also, I am assuming that you may not be aware of the proposed change or its potentially adverse effect.

The Social Security Administration has proposed an initiative identified as REGO II. Simply stated, the initiative terminates the practice of Social Security Administration's withholding of attorneys' fees from the retroactive benefits due to individual claimants.

The stated purpose of the proposed change is to curtail the cost of administration involved in withholding and distribution of the attorneys' fees. However, I would suggest that the projections of any anticipated savings should be carefully scrutinized. The initiative further provides that the agency would create a process to provide relief to aggrieved claimants. I am not sure what that means, however, it would appear to create the need for additional bureaucratic support, which is simply unnecessary.

I am yet to be convinced that the incremental cost of withholding and distribution of approved attorneys' fees is that great. Information I've seen had estimated the cost at $20 million the last fiscal year. However, it is my understanding that the personnel involved in the agreement fee arrangement system are otherwise involved in the claims administration process. I would be surprised to see any meaningful reduction in workforce if the fee agreement system is abolished. In the event that some change in the fee arrangement system is inevitable, I would suggest simply converting to a system of checks jointly issued to the claimant and the client. There should be no additional administrative cost to converting to that system, and perhaps there could be some administrative savings. Some might suggest that that system could be subject to abuse by attorneys charging more than the allowed fee, however, that could be overcome by a jointly executed affidavit as to the disposition of funds. I would further suggest that that should be one of the stringent criminal penalties for any attorneys found guilty of abusing the process.

One might expect the opposition to the proposed initiative to come from attorneys who merely want to protect their attorneys' fees. However, that is not what precipitates this letter. Presently, the vast majority of attorneys do not handle Social Security cases. The primary reason is the fees are usually not high and it takes an exceptionally long period of time to collect a fee in a case that is eventually successful. I have no doubt that the failure to withhold attorneys' fees from retroactive benefits will drive many more attorneys out of the process. However, it is not the attorneys that I'm concerned about, it is the claimants. Over the years I have witnessed the outcomes of multiple Social Security cases. There is a distinct differential in the number of cases that are ultimately successful when the claimant is represented by competent legal counsel. Any regulatory change that has a chilling effect on obtaining competent counsel for these people who are already not able to help themselves would be a travesty.

In conclusion, I would simply make two points:

First of all, Social Security practice is not an adversarial process. I have observed no instances where attorneys were able through their persuasive skills to obtain benefits to undeserving claimants. On the other hand, the collection and presentation of evidence in support of a claim is a meticulous task which often is not adequately handled without legal representation.

Secondly, the attorneys' fees are not paid from tax dollars or the Social Security Trust Fund. They are paid out of claimants' retroactive benefits. If the claimants are willing to have that amount withheld for adequate legal representation, why should government interfere?

I would appreciate the opportunity to express myself on this issue. I look forward to continuing to work with you on this and other matters during President Clinton's second term. Keep up the good work. In the meantime, with kindest regards,

Yours very truly,

Allen

Allen Gordon

AG/mj

ALLEN GORDON
SENATOR
25TH DISTRICT

P.O. BOX 558
MORRILTON, ARKANSAS 72110

Ms. Carol Rasco
Assistant to the President for
Domestic Policy
The White House
Washington, D.C. 20500

AUG 1 4 1995

NOTE TO BRIAN COYNE

Subject: REGO II Legislative Proposal to Eliminate Representative's Fee Program--Response to Leonard Rubenstein's Letter--REPLY

As you requested, attached is a summary of points for the White House's use in responding to Mr. Rubenstein's letter. I apologize for the delay in getting this to you; several intervening events (briefings, OGC clearances, etc.) prevented our releasing it before now.

Please call me or Darlynda Bogle if you have questions or need further assistance.

Darlynda Bogle for
Toni Lenane

Attachment

cc:
Judy Chesser

RECEIVED OEO
1995 AUG 14 PM 3:02
BALTIMORE, MARYLAND

REGO II INITIATIVE TO ELIMINATE REPRESENTATIVE'S FEE PROGRAM: INFORMATION FOR REPLY TO LEONARD RUBENSTEIN

DESCRIPTION AND RATIONALE:

- This REGO II initiative was one of several approved by the White House in April, to advance the Administration's goal to reinvent the federal government by streamlining processes, improving customer service delivery and maximizing cost savings.

- In examining all of our operations under the REGO II mandate, we concluded that our continued involvement in the representative's fee process is not sustainable. Interceding in claimants' arrangements with their representatives is simply not an appropriate Agency function. Instead, we must focus our increasingly scarce resources on more critical operations, such as improving our disability claims process, in furtherance of the Agency's mission and obligation to the American public.

- The REGO II representative's fee initiative has four main objectives: to impose a statutory cap on fees; to eliminate SSA's involvement in authorizing, withholding and paying fees; to provide claimants with a complaint mechanism if the statutory cap is exceeded; and to save $80 million in administrative costs.

RESPONSES TO SPECIFIC POINTS RAISED BY MR. RUBENSTEIN :

- EFFECT ON CLAIMANT ACCESS TO LEGAL REPRESENTATION

- We recognize the important role that the representative community has played in assisting Social Security claimants through the adjudication of their claims and appeals. We hope and expect that this role will continue as we implement improvements under REGO II as well as our redesigned disability process.

- While we cannot predict with certainty how the private bar will respond to this proposal, our statistics do not indicate that eliminating the attorney's fee payment process would substantially change claimants' access to legal representation. For instance, although the Act prohibits direct payment of fees to representatives who handle cases under our means-tested Supplemental Security Income (SSI) program, 64% of SSI claimants had representatives at the hearings level in Fiscal Year (FY) 1994; 72% of those representatives were attorneys. That compares with a 73% representation rate, (88% of whom wereattorneys) for our Title II claimants for the same year.

- Furthermore, although the Act prohibits direct payment of fees to non-attorney representatives under either Title II or Title XVI, these representatives are accepting Title II cases. Accordingly, we believe that most claimants could obtain competent representation without SSA's involvement in the attorney's fee payment process.

- We should point out that the higher representation rates for Title II claimants are not driven solely by the provision for direct payment of fees. Title II claimants, as a group, are far more likely than SSI claimants to have economic resources that would make them attractive clients, regardless of SSA's role in the fee approval process. They are more likely to have assets, to have had a connection to the work force, and to be concerned about the adverse consequences to their credit ratings that would stem from a failure to pay any fee owed to an attorney.

- ALTERNATIVES PROPOSED BY ADVOCATES

- We looked at the two proposals suggested by the disability advocates, i.e., a percentage-based fee calculation formula and a two-party check payment mechanism. After careful consideration, we concluded that both options presented cost and operational concerns that would have kept SSA in the fee business at some level, and our projected savings would not be achieved.

- The difficulties involved with retaining a percentage-based formula far outweigh any advantages it might offer.

- First, retaining such a formula would maintain SSA involvement at a relatively high level. Specifically, to accommodate a percentage-based formula, SSA would have to continue to calculate a percentage of the retroactive benefits check in every case, and notify the claimant and representative of the amount. In many cases, the initial calculation of retroactive benefits is merely an estimate, which must subsequently be adjusted to account for such factors as auxiliaries' benefits and workers' compensation offset. In these circumstances, claimants may receive additional money in a subsequent payment or series of payments. Under the current representative's fee process, attorneys also may receive additional fees out of the adjusted retroactive benefits. If we were to retain a percentage-based formula, we could expect continued Agency involvement in addressing inquiries from attorneys concerning their potential entitlement to portions of any adjusted, additional benefits awarded to the claimant.

- In addition, a percentage-based formula would provide no incentive for representatives to accept cases in which a favorable decision would yield little or no retroactive benefits. Under the current fee process, a representative is required to petition the Agency for a fee in such cases as continuing disability reviews and workers' compensation matters. On the other hand, our proposal allows representatives to contract direclty with the claimants for fees in these cases, without seeking prior permission from the Agency.

- Finally, we expect that our redesigned process will be simpler for claimants and/or their representatives to navigate, and also will produce quicker decisions. Under the current fee agreement program, this improved disability process could produce smaller past-due benefits awards, which in turn would reduce the average representative's fee. Our proposed flat-fee compensation system, therefore, comports with the improvements anticipated from our redesigned disability process and would not adversely affect attorneys.

- We also considered the concept of a two party check; but it, too, presented obstacles that are not surmountable within the context of the REGO II mandate. In the first instance, it directly contravenes another of SSA's REGO II goals, i.e., to pay all benefits through direct electronic deposit. That initiative is part of a larger, Government-wide legislative effort (the Electronic Funds Transfer Expansion Act of 1995), designed to move to an all-electronic payment environment by the end of Fiscal Year 1999.

- Moreover, for cases in which the first check is equal to or less than the amount that the representatives have charged, we could expect those representatives to raise questions concerning their potential entitlement to funds from subsequent benefits payments. In addressing these concerns, we would retain significant involvement in the fee process, which, as we have stated, is not an appropriate Agency function.

- Furthermore, the systems and operations impact of providing a two-party check would be significant. It is unlikely that the process could be fully automated; the portions of the process that would require manual processing would have a significant impact on our staff and other resources. Most significantly, in the context of REGO II, a two-party check system would seriously threaten our ability to achieve our projected administrative savings of $80 million and to redirect from 1,600 to 1,800 workyears to our priority workloads.

- Finally, it should be noted that when SSA proposed a two-party check mechanism in its 1988 Report to Congress, certain Members expressed concern, which is recorded in the Congressional Record, that such a policy would invite misappropriation of claimants' funds by some attorneys, and require a new and ongoing supervisory role for SSA to ensure funds were correctly disbursed. Members also worried that a two-party check system could lead to delays in payment, since each party would be required to be present in order to endorse and negotiate the check.

- PROTECTING CLAIMANTS AGAINST POTENTIAL ABUSE

- We acknowledge that a flat maximum fee approach will allow representatives greater latitude to charge and collect what the market will bear, and that fees in some cases may be more than SSA would authorize under its current statutory authority. This concern, among others, ultimately led us to reduce the proposed maximum fee to $2500, which is slightly higher than the average attorney fee paid under the current process. While the potential still exists for representatives to routinely charge the maximum fee, we believe that, in the end, competition among representatives would mitigate any tendency to overcharge claimants.

- We also are confident in claimants' ability to defend themselves against potential abuse. Through notices and other public information efforts on SSA's part, claimants would be well aware that they could execute contracts for amounts <u>up to</u> the statutory cap. This would decrease the likelihood of a routine acceptance of contracts charging the maximum amount.

- Of course, to the extent that representatives charge <u>more</u> than the maximum allowable fee, the legislative proposal retains authority for SSA to seek sanctions that could result in the suspension or disqualification of the offending representative. Claimants would have additional recourse to the state bar associations for disciplinary action.

- Although a flat dollar cap may result in a few cases in which the claimant is charged a relatively high percentage (or all) of his or her retroactive benefits, that amount could nevertheless represent only a small portion of the stream of benefits the claimant would receive over the life of his or her claim.

5-5167
-6974

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Sent

SOCIAL SECURITY

Office of the Commissioner

July 20, 1995

The Honorable Thomas Daschle
United States Senate
Washington, D.C. 20510

Dear Senator Daschle:

This is in response to your letter concerning the Social Security Administration's (SSA) proposal under "Reinventing Government II" (REGO II) to discontinue its representative fee program. As you know, this initiative was one of several items announced in April to advance the Administration's goals to streamline processes, improve customer service delivery and maximize cost savings.

In developing this proposal we concluded that our continued involvement in the fee process is no longer an appropriate Federal responsibility and that claimants could be protected without our present level of involvement. The REGO II representative fee initiative has five main objectives: to eliminate SSA's involvement in authorizing, withholding and paying fees; to retain a statutory cap on fees; to provide claimants with a complaint mechanism if the statutory cap is exceeded; to pay claimants more expeditiously; and to achieve $80 million in cost and associated workyear savings.

Some people have expressed concerns that eliminating the representative fee program could affect the ability of Social Security claimants to secure competent representation from the private bar. However, our statistics do not indicate that our withdrawal from this process would substantially change claimants' access to legal representation. For instance, although the Social Security Act prohibits direct payment of fees to representatives who handle cases under our means-tested Supplemental Security Income (SSI) program, 64 percent of SSI claimants had representatives at the hearings level in Fiscal Year 1994; 72 percent of those representatives were attorneys, and 28 percent were non-attorneys. That compares with a 73 percent representation rate (88 percent attorneys and 12 percent non-attorneys) for our Title II claimants for the same year. Based on this experience, we believe that claimants could obtain competent representation without SSA's involvement in the representative fee payment process.

As you pointed out, SSA's 1988 report to Congress proposed substituting a two-party check for the current process of authorizing, withholding and directly paying representatives' fees. The Agency's mandate at that time, however, did not

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include the specific cost considerations we face in today's budget environment. To adopt the two-party check system at this time would not significantly decrease the administrative costs SSA now incurs, and would generate additional costs involved in start-up and conversion to a new process. We also should mention that in discussions following release of our 1988 report, concerns were expressed that a two-party check arrangement would invite misappropriation of funds by unscrupulous attorneys. Moreover, there were concerns that requiring a dual endorsement could potentially delay payment to the parties.

It is true that the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) did streamline the representative fee program somewhat, through the introduction of the fee agreement process. However, the primary beneficiaries of the OBRA 1990 improvements were the users, i.e., the representatives. There was no decrease in SSA's administrative burden; this process continues to require a significant involvement on the part of SSA in authorizing, withholding, and directly paying representatives' fees. Moreover, because the OBRA 1990 amendments added the fee agreement process as an alternative to, and not a replacement for, the existing process, SSA now operates with two distinct representative fee processes. Each requires separate operating instructions and involves case-by-case processing, much of which is manual. Thus, I cannot agree that the OBRA 1990 amendments reduced the paperwork and staff resources required by SSA.

Our new initiative represents a fundamental shift in policy, which we believe fairly balances the interests of all concerned. It removes the Agency from oversight responsibility in claimants' arrangements with their representatives, leaving them to contract freely with their representatives, as they would for any other service. It also provides reasonable protection for claimants by retaining SSA's authority to seek sanctions against representatives who charge more than the maximum fee. And, it affords representatives and claimants an opportunity to receive their funds more quickly, since funds formerly withheld for payment of fees would be paid to claimants along with the rest of their past-due benefits. Finally, it encourages representatives, through the provision for a flat dollar-amount cap, to get involved early in the claims adjudication process, and to expedite the development and resolution of claims--which is one of the stated goals of our disability redesign plan.

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We remain convinced that this proposal is sound and is in the best interest of claimants, their representatives and the American taxpayer. Our efforts are designed to provide the best possible service in the most efficient way, and we welcome your continued input. We would be more than happy to meet with you or your staff to discuss any ideas on how this proposal might be improved.

Sincerely,

Shirley S. Chater

Shirley S. Chater
Commissioner
of Social Security

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SOCIAL SECURITY

Office of the Commissioner

July 20, 1995

The Honorable Patricia Schroeder
House of Representatives
Washington, D.C. 20515

Dear Ms. Schroeder:

This is in response to your letter concerning the Social Security Administration's (SSA) proposal under "Reinventing Government II" (REGO II) to discontinue its representative fee program. As you know, this initiative was one of several items announced in April to advance the Administration's goals to streamline processes, improve customer service delivery and maximize cost savings.

In developing this proposal we concluded that our continued involvement in the fee process is no longer an appropriate Federal responsibility and that claimants could be protected without our present level of involvement. The REGO II representative fee initiative has five main objectives: to eliminate SSA's involvement in authorizing, withholding and paying fees; to retain a statutory cap on fees; to provide claimants with a complaint mechanism if the statutory cap is exceeded; to pay claimants more expeditiously; and to achieve $80 million in cost and associated workyear savings.

Some people have expressed concerns that eliminating the representative fee program could affect the ability of Social Security claimants to secure competent representation from the private bar. However, our statistics do not indicate that our withdrawal from this process would substantially change claimants' access to legal representation. For instance, although the Social Security Act prohibits direct payment of fees to representatives who handle cases under our means-tested Supplemental Security Income (SSI) program, 64 percent of SSI claimants had representatives at the hearings level in Fiscal Year 1994; 72 percent of those representatives were attorneys, and 28 percent were non-attorneys. That compares with a 73 percent representation rate (88 percent attorneys and 12 percent non-attorneys) for our Title II claimants for the same year. Based on this experience, we believe that claimants could obtain competent representation without SSA's involvement in the representative fee payment process.

As to your question regarding potential attorney-client conflict resolution, SSA does not intend to become involved in disputes between the contracting parties, nor do we view it as an appropriate responsibility for this Agency. Rather, the Agency's role would be limited to bringing sanctions against

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representatives who attempt to charge claimants more than a fixed maximum amount specified by statute. We anticipate relatively few such cases, and therefore would not expect the costs of enforcement to significantly affect the savings we project.

Our new initiative represents a fundamental shift in policy, which we believe fairly balances the interests of all concerned. It removes the Agency from oversight responsibility in claimants' arrangements with their representatives, leaving them to contract freely with their representatives, as they would for any other services. It also provides reasonable protection for claimants, by retaining SSA's authority to seek sanctions against representatives who charge more than the maximum fee. Moreover, it affords representatives and claimants an opportunity to receive their funds more quickly, since funds formerly withheld for payment of fees would be paid to claimants along with the rest of their past-due benefits. Finally, it encourages representatives, through the provision for a flat dollar-amount cap, to get involved early in the claims adjudication process, and to expedite the development and resolution of claims--which is one of the stated goals of our disability redesign plan.

Thank you for your interest in this issue. I hope this information is helpful to you.

Sincerely,

Shirley S. Chater

Shirley S. Chater
Commissioner
of Social Security

DRAFT

SOCIAL SECURITY

Office of the Commissioner

July 20, 1995

The Honorable Martin Frost
House of Representatives
Washington, D.C. 20515

Dear Mr. Frost:

This is in response to your letter concerning the Social Security Administration's (SSA) proposal under "Reinventing Government II" (REGO II) to discontinue its representative fee program. As you know, this initiative was one of several items announced in April to advance the Administration's goals to streamline processes, improve customer service delivery and maximize cost savings.

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services. It also provides reasonable protection for claimants by retaining SSA's authority to seek sanctions against representatives who charge more than the maximum fee. Moreover, it affords representatives and claimants an opportunity to receive their funds more quickly, since funds formerly withheld for payment of fees would be paid to claimants along with the rest of their past-due benefits. Finally, it encourages representatives, through the provision for a flat dollar-amount cap, to get involved early in the claims adjudication process, and to expedite the development and resolution of claims--which is one of the stated goals of our disability redesign plan.

Thank you for your interest in this issue. I hope this information is helpful to you.

Sincerely,

Shirley S. Chater

Shirley S. Chater
Commissioner
of Social Security

May. 10. 1995 4:31PM OPDC (RM 960 ALT) No. 1800 P. 4/11

25147-12-208

Phillip A. George
Attorney at Law

665 Nashville Pike
P.O. Box 8130
Gallatin, TN 37066

Phone (615) 451-1550
Telecopier (615) 452-6222

April 14, 1995

Shirley S. Chater, Commissioner
Social Security Administration
Baltimore, MD 21235

95 APR 18 PM 5:2

Re: Elimination of Attorney Fee Program

Dear Ms. Chater:

I heard your keynote address at the recent National Organization of Social Security Claimants' Representatives (NOSSCR) conference in Washington, D.C., this past week, and I must tell you that I am appalled to learn that as part of its "reinventing government" process, the Social Security Administration (SSA) is planning to eliminate the attorney fee program and direct payment to attorneys in Title II cases. Your failure to disclose this proposed change, which I and the NOSSCR membership learned about only yesterday in a memo from NOSSCR's executive director (copy enclosed), to the persons most affected by its provisions is reprehensible, and is but another example of the deceptive manner in which SSA has presented its reengineering proposal to Congress and the public. It is apparent that SSA's intention is to effectively deprive claimants of competent legal representation in disability claims, as this will surely be the effect of the elimination of direct payment of attorney fees. SSA is not reengineering. Rather, it is systematically dismantling the disability program established by Congress over a half century ago.

In considering the plan to eliminate direct payment of attorney fees in Title II cases, I direct your attention to 42 U.S.C. § 406(a)(4)(A), which provides that in Title II cases, the Secretary **shall** certify any attorney fees for payment out of the Title II claimant's past-due benefits. To my knowledge, this statute has not been abrogated in the last 100 days. It would thus appear that any effort by SSA to eliminate direct payment of attorney's fees is contrary to federal law.

In your September 1994 message accompanying SSA's "Plan for a New Disability Claims Process," you state that "[t]he new design gives us the opportunity to develop relationships with the public and our employees that are based on open communication, partnership, and the belief that our customers need to be provided as much information as possible about the process and the program." Ms. Chater, if you eliminate the direct payment provision of attorney fees in Title II cases, you assure that claimants will no longer have access to effective legal counsel. Many attorneys no longer accept Title XVI cases because of the absence of a provision for the direct payment of attorney fees. I myself accept such cases, but I have had numerous occasions when clients have failed to pay my authorized fee. Most attorneys who accept Title XVI cases have similar experiences. Virtually every claimant who receives Social Security benefits is destitute; virtually all owe family members and friends who have provided financial assistance to the claimant for months, and often, years; many are uneducated, or have severe mental impairments; and many suffer from substance addiction. Many of these individuals WILL NOT pay the attorney who wins their case. Indeed, SSA recognizes that "[m]any claimants resent having to pay a representative to establish entitlement to government-sponsored benefits."[1] The only assurance an attorney has of getting paid is the direct-payment provision. SSA itself recognizes the intention of the direct-payment provision: "The intent of this [direct payment] procedure is to provide an incentive for attorneys to accept Social Security claims work in order to increase claimant access to attorneys."[2] If you eliminate the direct-payment provision, you eliminate attorney representation of claimants. That is, I submit, precisely SSA's intention.

SSA has long recognized the representational rights of claimants and has provided an administrative framework designed to ensure that claimants will have access to the legal community in the pursuit of their claims. Those are not my words, Ms. Chater, they are the words of SSA's own Disability Process Reengineering Team.[3] SSA's proposed action, coupled with the elimination or substantial reduction of legal services programs, will ensure that claimants will NOT have access to the legal community in the pursuit of their claims. Instead, claimants will have to rely upon overworked Congressional staff, or friends or relatives (virtually all of whom will know nothing about Social Security law); or they will have to "go it alone." Is this the WORLD-CLASS SERVICE that SSA purports it will offer claimants under a redesigned disability process?

[1] "Plan for a New Disability Claim Process," (September 1994), at p. 42.
[2] "Disability Process Redesign, The Proposal and Background Report from the SSA Disability Process Reengineering Team (March 1994), at p. 72.
[3] Id. at 71. See also "Plan for a New Disability Claim Process," (September 1994), at p. 42.

It is difficult not to be cynical about the efforts of individuals intent on destroying a program that has served this country well for over 50 years. Yes, the program has its problems. Yes, there are improvements that can be made that will make it work better. This is not one of them.

Sincerely,

Phillip A George

Phillip A. George

Copies to:

The Honorable Bill Clinton
The Honorable Al Gore
The Honorable Fred Thompson
The Honorable Bill Frist
The Honorable Bart Gordon
The Honorable Bob Clement
The Honorable Harold E. Ford
The Honorable James Quillen
The Honorable John J. Duncan, Jr.
The Honorable Van Hilleary
The Honorable John Tanner
The Honorable Zach Wamp
The Honorable Ed Bryant
Nancy E. Shor, Executive Director (NOSSCR)

Enclosures:

Memorandum, dated April 11, 1995, from Nancy Shor, NOSSCR Executive Director, to NOSSCR members
Text of Commissioner's Broadcast Message, dated April 10, 1995, entitled, "Announcement of SSA's Reinventing Government Phase II (REGO II) Initiatives" (attorney fee program elimination announcement on page 2)

OLIVER, GRAVES, TOENNIS
& GUSTAFSON, P.C.
Attorneys and Counselors at Law

Phillip R. Oliver
James R. Graves
Paul E. Toennis
Ingrid Gustafson

April 18, 1995

Senator Max Baucus
2817 2nd Avenue North
Billings, MT 59101

RE: REGO (Reinventing Government) to Eliminate Withholding for Attorney's Fees Entitled To Social Security Cases

Dear Senator Baucus:

It has recently come to my attention that as part of the REGO II process under the Social Security Administration, it is being proposed that provisions for withholding attorney's fees in Title II cases will be eliminated. I wish to express that I am adamantly opposed to this change as contrary to SSA's position, withholding attorney's fees and making payment for attorney's fees directly to the attorney are critical to Social Security's mission in providing services and benefits to qualified individuals. The Social Security Administration's proposal to eliminate withholding of attorney's fees, in actuality is a proposal to limit attorney representation in these cases. At present, attorney's fees are not withheld from individuals receiving SSI benefits and as such, the majority of attorneys will not take an SSI only claim. As such, disabled claimants who are entitled to receive SSI benefits, do not as they cannot obtain competent representation. I believe this will occur in Title II cases as well if a proposal to eliminate withholding attorney's fees is accepted. Unless the Administration withholds attorney's fees or issues payment for back benefits jointly to the claimant and his/her attorney, the attorney will not receive payment for his/her services. Ultimately, attorneys will no longer engage in representing Social Security disability clients. Thus, eliminating the attorney fee program would effectively eliminate the ability of Social Security claimants to obtain representation from private counsel. Claimants who are without representation cannot effectively pursue their claims nor realize the importance of filing appeals, etc. The proposal to eliminate the attorney fee program is in actuality a hidden program to eliminate attorney representation in Social Security disability claims and make it easy for the Social Security Administration to deny claims.

401 N. 31st. Street, Suite 700, Box 7227, Billings, Montana 59103-7227
Telephone (406) 259-7796 Telecopier (406) 259-5111

I strongly urge you **not** to support this provision of the Reinventing Government II effort.

Should you have any further questions or concerns, please contact me.

Sincerely,

OLIVER, GRAVES, TOENNIS & GUSTAFSON, P.C.

Ingrid Gustafson
Attorney at Law

IG:bjm