DA+A - 551

DA+A-SST

EXECUTIVE OFFICE OF THE PRESIDENT

29-May-1996 11:42am

TO: Molly Brostrom
TO: Jeremy D. Benami
TO: Jeffrey Levi
TO: Richard E. Green
TO: Jack A. Smalligan

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: More info from SSA

Judy Chesser tells me that SSA doesn't want to advertise this because it may encourage people not to reapply early (which SSA wants to encourage so that they can get the work done), but:

if someone waited to reapply until December and they can show cause as to why they didn't respond to the notice within 10 days for a variety of different reasons, SSA would waive the requirement and give them "their full Goldberg-Kelly rights" (whatever those are), and they would stay on benefits until their redetermination was done.

DA+A-SSI

EXECUTIVE OFFICE OF THE PRESIDENT

29-May-1996 11:29am

TO: Molly Brostrom

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Jeremy D. Benami
CC: Jeffrey Levi

SUBJECT: DA&A process

Our letters could say 75-80% of DA&A folks will requalify for SSI based on another disability. (CBO estimated one number, and SSA the other, but Judy Chesser couldn't remember which was which.)

On the timing issue, I talked to Judy Chesser. (Jeff, I know you are calling the chief of staff Brian Coyne as well on this, but it's good for them to get more than 1 call.)

Judy told me that the law says something like SSA has to notify people within 90 days of enactment, and that "if a beneficiary reapplies for benefits within 120 days of enactment, then the commissioner shall evaluate that claim by January 1" (the date they lose benefits). (I'm not sure the time frames are right; she will clarify for me.)

So there is some statutory basis for their timeline. But I argued to her that nothing prevented them from processing reapplications received AFTER 120 days by 1/1, if they are able to do so -- that all the law says is that,if you make the 120 day deadline, you are guaranteed a decision by 1/1. Judy sort of disagreed with me and said that seemed to make the statutory language meaningless. But she'll look into it further.

She did point out that the more emphasis they put on these reapplications, the more they fall behind on other work (initial applications, CDR's, etc.)

DAA-SSI

EXECUTIVE OFFICE OF THE PRESIDENT

30-May-1996 05:29pm

TO: (See Below)

FROM: Jack A. Smalligan
Office of Mgmt and Budget, HRD

SUBJECT: Implementation of DA&A Provision

DPC staff have asked questions regarding SSA's schedule for implementing the review of DA&A beneficiaries. Below are the key milestones and legal constraints that dictate SSA's schedule:

March 29. Legislation enacted.

June 7 to June 21. Termination notices mailed in three staged mailings. This meets the statutory 90 day deadline (June 28) for notifying beneficiaries.

Ten days from the date a recipient receives a termination notice the recipient must appeal to be given Goldberg v. Kelly (GK) rights. GK only applies to SSI and gives a person receiving a termination letter the right to a continuation of benefits until they receive a face to face hearing. Regardless of GK, everyone continues to receive benefits until January 1, 1997. Those covered by GK who have not received their face to face hearing by January 1 will continue to receive benefits until their hearing. Administering the thousands of GK face to face hearings by January 1 is a massive undertaking and SSA is unlikely to complete all the hearings by January. (Face to face hearings can only be performed by staff with specialized training. Trained staff are limited and not necessarily located where DA&A cases are concentrated.)

The ten day window to obtain GK rights derives from this court ruling. Those who do not appeal within ten days who can show good cause can still be given GK rights, subject to a review by SSA. SSA states that it will use its normal rules for other termination cases to determine whether a recipient who appeals after ten days should be given a good cause exception. The DA&A cases will not be treated more or less favorably than any other case subject to GK.

July 28: Deadline for receipt of appeal (120 days for enactment). All appeals must receive a new medical determination by January 1, 1997. Appeals after this case are treated as new disability claims and are placed in disability processing queue along with all other claims for new disability benefits.

SSA has provided a more detailed schedule that I will fax to Diana Fortuna.

Distribution:

TO: Kenneth S. Apfel
TO: Barry White
TO: Keith J. Fontenot
TO: Diana M. Fortuna
TO: Molly Brostrom
TO: Richard E. Green
TO: Jeffrey Levi
TO: Desiree Filippone

Why 7/28?

DATA-SET

SOCIAL SECURITY ADMINISTRATION
FO ADDRESS
CITY ST ZIP

Social Security Administration
Supplemental Security Income
Notice of Planned Action

Payee Name
For Beneficiary Name
Address
City State Zip

Claim Number:
Date:

IMPORTANT - READ CAREFULLY

We are writing to tell you that your SSI will end effective January 1, 1997. A new law says that effective January 1, 1997, we can no longer pay Supplemental Security Income (SSI) benefits to people whose disability is based on drug addiction and/or alcoholism.

The New Law Affects You

We are paying you SSI disability benefits because drug addiction and/or alcoholism is a contributing factor material to your disability. This means that if we had not considered your drug addiction and/or alcoholism, we would not have found you disabled.

If You Disagree With The Decision

If you disagree that your disability is based on drug addiction and/or alcoholism you should appeal by asking us to make a new disability decision.

You should also appeal if you think you can get SSI because you are blind, or you are, or will be, age 65 before January 1, 1997.

If you want to appeal, you should call us right away. The telephone number is at the end of this letter.

If you appeal, we will review your case and consider any new facts you have.

If You Appeal Within 10 Days

If you appeal within 10 days and we do not give a decision before January 1, 1997, you may be able to keep getting your SSI until we decide your case.

See Other Side

- The 10 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period. — how?
- If you lose your appeal, and we don't stop your SSI January 1, 1997, you might have to pay back some or all of the money you receive after December 1996.

However, even if you appeal in 10 days, we will stop your SSI January 1, 1997 if all of the following are true:

- Our new decision is the same as the one you appealed, and,
- You had an opportunity to meet with the person who decided your case, if you requested it, and — face to face
- We send or give you a letter with our new decision in time to stop your SSI January 1, 1997.

If You Appeal After 10 Days

The law says if you appeal before July 28, 1996, we should complete our review of your case by January 1, 1997. However, if you have not filed an appeal within 10 days, we will not continue to pay you after December 1996.

You have 60 days to ask for an appeal.

- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for an appeal.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your case. Your local Social Security office has a list of groups that can help you.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

Information About Medicaid

If you are getting Medicaid based on SSI, Medicaid should continue as long as you get SSI. If you need more information about how this change in the law will affect your Medicaid benefits beginning January 1, 1997, please contact (name and other agency information from State/County of residence).

Things To Remember

This letter is only about your SSI. If you receive Social Security disability benefits, you will receive another letter about those benefits.

OPTIONAL PARAGRAPH (2489): This information is also being sent to (your representative payee/Name of Recipient).

OPTIONAL PARAGRAPH (1000): The other letter you received with this one is (an English/a Spanish) translation of the same information contained in this letter.

If You Have Any Questions

If you have questions about anything in this letter, call your local Social Security office at [FO phone number], or our toll-free number at 1-800-772-1213. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

[Field Office Address
City, ST, ZIP]

If you have any questions about other Social Security matters, you may call us toll-free at 1-800-772-1213.

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

Janice L. Warden
Deputy Commissioner
for Operations

SOCIAL SECURITY ADMINISTRATION
FO ADDRESS
City ST Zip

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Termination

Payee Name
For Beneficiary Name
Address
City State Zip

Claim Number:
Date:

IMPORTANT - READ CAREFULLY

We are writing to tell you that your disability benefits will end effective January 1, 1997. A new law says that effective January 1997, we can no longer pay Social Security disability benefits to people whose disability is based on drug addiction and/or alcoholism.

Benefits payable to anyone else entitled on your account will also end January 1, 1997. The last payments you and your family will receive will be the payments made about January 3, 1997.

The New Law Affects You

We are paying you disability benefits because drug addiction and/or alcoholism is a contributing factor material to your disability. This means that if we had not considered your drug addiction and/or alcoholism, we would not have found you disabled.

If You Disagree With The Decision

If you disagree that your disability is based on drug addiction and/or alcoholism, you should appeal by asking us to make a new disability decision.

If you want to appeal, you should call us right away. The telephone number is at the end of this letter.

If you appeal, we will review your case and consider any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.

See Other Side

- You must have a good reason if you wait more than 60 days to ask for an appeal.

The law says that if you appeal before July 28, 1996, we should complete our review of your case by January 1, 1997.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past-due benefits to pay toward the fee.

If You Are Age 60 or Over

If you are within 3 months of age 62 or older, you can file a claim for reduced retirement benefits.

If you are a widow(er) and you are within 3 months of age 60 or older, you can file a claim for reduced survivor's benefits.

If you want to file for either of these benefits, call your local Social Security office right away.

Information About Medicare

If you have Medicare, your coverage will end December 31, 1996.

Things To Remember

The law also changed the Supplemental Security Income rules. You may receive letters about those changes.

We will also send your representative payee a copy of this letter.

If You Have Any Questions

If you have any questions about anything in this letter, call us at our toll-free number at 1-800-772-1213. (1) (2) We can answer most questions over the phone. You can also write or visit any Social Security office. (3)

(4)

If you have any questions about other Social Security matters, you may call us toll-free at 1-800-772-1213.

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

Janice L. Warden
Deputy Commissioner
for Operations

FILL-INS

(1) Choice 1: USE: Field Office (FO) address and phone on TRIDE
"or call your local office at"
Choice 2: USE: FO phone on TRIDE is "800" number
NULL

(2) Choice 1: USE: FO address and phone on TRIDE
FO phone number
Choice 2: USE: FO phone on TRIDE is "800" number
NULL

(3) Choice 1: USE: FO address is on TRIDE
"the office that serves your area is located at:"
Choice 2: USE: FO address on TRIDE is SSA default address
NULL

(4) Choice 1: USE: FO address is on TRIDE
FO address
Choice 2: USE: FO address on TRIDE is SSA default address
NULL

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to:

Office of the Commissioner
Baltimore MD 21235

APR - 5 1996

Dear Colleague:

I am writing to inform you about some important changes in the Social Security law affecting people who receive Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits because of drug addiction or alcoholism (DAA). You may remember that the Social Security Independence and Program Improvements Act of 1994 contained major provisions which imposed requirements and restrictions on individuals receiving benefits because of DAA. Public Law (P.L.) 104-121, the Contract with America Advancement Act of 1996, signed by the President on March 29, 1996, has added further restrictions.

As an official of an organization interested in the well-being of these individuals, you should know that P. L. 104-121 eliminates SSDI and SSI payments and Medicare and Medicaid eligibility for individuals whose DAA is a contributing factor material to their disability.

Other provisions of Public Law of P.L. 104-121 are as follows:

- The new eligibility rules apply immediately for any new or pending claim for benefits.
- Individuals currently receiving disability benefits based on DAA will have their benefits terminated on January 1, 1997.
- Individuals currently receiving benefits that will terminate because of the new DAA provisions will be notified and may reapply to determine whether they have another disabling impairment(s) which would make them eligible to receive SSDI or SSI benefits. These individuals will also be able to appeal our identification of them as DAA.
- Individuals receiving benefits for another disabling impairment who have a DAA condition and cannot manage their own benefits are required to have a representative payee. In addition, if a DAA condition is present, they will be referred to the State DAA agency for treatment. (These requirements apply to applications filed on or after July 1, 1996.)

A general information factsheet directed to DAA beneficiaries is enclosed for your information. If you have any questions, please call Brenda Kibler in our Office of National Affairs at (410) 965-5649.

Sincerely,

Joan E. Wainwright

Joan E. Wainwright
Associate Commissioner
for Communications

Enclosure

DA+A - SSI

EXECUTIVE OFFICE OF THE PRESIDE
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NT
NT

30-May-1996 05:29pm

TO: (See Below)

FROM: Jack A. Smalligan
Office of Mgmt and Budget, HRD

SUBJECT: Implementation of DA&A Provision

DPC staff have asked questions regarding SSA's schedule for implementing the review of DA&A beneficiaries. Below are the key milestones and legal constraints that dictate SSA's schedule:

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The ten day window to obtain GK rights derives from this court ruling. Those who do not appeal within ten days who can show good cause can still be given GK rights, subject to a review by SSA. SSA states that it will use it s normal rules for other termination cases to determine whether a recipient who appeals after ten days should be given a good cause exception. The DA&A cases will not be treated more or less favorably than any other case subject to G K.

July 28: Deadline for receipt of appeal (120 days for enactment). All appeals must receive a new medical determination by January 1, 1997. Appeals after this case are treated as new disability claims and are placed in disab ility processing queue along with all other claims for new disability benefi ts.

SSA has provided a more detailed schedule that I will fax to Diana For tuna.

Distribution:

DATA-SSI

EXECUTIVE OFFICE OF THE PRESIDENT

30-May-1996 06:49pm

TO: Jeremy D. Benami
TO: Molly Brostrom
TO: Diana M. Fortuna

FROM: Jeffrey Levi
AIDS Policy Council

CC: Patsy Fleming

SUBJECT: SSI stuff

While I think I am beginning to understand what the rules are, given the timelines that are so tight...would it make sense for a few of us to get together tomorrow or Monday to be sure we all have the same understanding of what is going on, are all convinced the maximum flexibility permitted under the law is occurring and then make sure the relevant agencies (in our case, HRSA) are informing their grantees and clients. There are also lots of outside groups prepared to offer guidance to their clients (e.g., Tim Westmoreland says Catholic Charities will work with their groups around the country) -- once we make the process clear and accessible.

thanks.

Catholic Charities USA

1731 King Street • Suite 200 • Alexandria Virginia 22314 • Phone: (703) 549-1390 Fax: (703) 549-1656

M E M O

TO: **Catholic Charities' Diocesan Directors**

FROM: **Sharon Daly, Deputy to the President for Social Policy**

DATE: **May 31, 1996**

RE: **Changes in SSI/SSDI Eligibility**

President Clinton has signed a new law which will repeal SSI/SSDI eligibility for those persons disabled by substance misuse or alcoholism. As a result, many of your clients will lose cash assistance and health coverage. This law, which will go into effect January 1, 1997, will terminate all cash benefits to all recipients currently receiving assistance because of their alcoholism or substance misuse disability. These recipients will also lose their Medicare or Medicaid coverage.

CLIENTS MUST REAPPLY BY JULY 28, 1996, TO AVOID TERMINATION OF BENEFITS.

After consultation with the Catholic Charities Alcohol and Other Drugs Committee, Catholic Charities USA recommends that Catholic Charities agencies help their clients in several ways:

1) Explain to clients the change in law and how it will affect them.

2) Identify the addresses of local Social Security offices where clients should reapply for SSI or SSDI.

3) Help to assemble medical records and other evidence to substantiate clients' eligibility for benefits based on other disabilities, such as mental illness.

4) Work closely with other Mental Health providers and local legal sevices offices to ensure that services are available to this disabled population.

For more information please see the enclosed pages which detail the changes in the law and provide suggestions on how to go about securing assistance for affected clients. If you have any questions, please contact Sharon Daly.

Please fax any action plan or strategy you have for addressing this change in SSI/SSDI law to Catholic Charities USA.

SSI and Medicaid Benefits Cut for Substance Misusers*

Background

Persons disabled by substance misuse or alcoholism will lose their cash benefits (i.e., Social Security Disability [SSDI] or Supplemental Security Income [SSI]) and health coverage (i.e., Medicare or Medicaid benefits) on January 1, 1997 as a result of a new law signed by President Clinton.

On March 27, 1996, the President approved Public Law 104-121, the "Contract with America Advancement Act of 1996," which excludes substance misuse and alcoholism as eligibility for Social Security benefits. In January, the federal Social Security Administration (SSA) will terminate benefits to all recipients currently receiving assistance because of their alcoholism or substance misuse disability. In particular, these recipients will no longer be eligible for Social SSDI or SSI because of drug addiction or alcoholism (DAA).

These recipients who have Medicare will also lose that coverage. Medicaid recipients in most states will also lose health coverage when their SSI or SSDI eligibility ends, unless they are eligible for Medicaid on a basis other than disability or they are eligible for another state-funded medical insurance program..

Impact on People Living with HIV Disease

This law will adversely affect HIV-positive individuals who receive Social Security and/or Medicaid benefits because of their addictions. Specifically, a recipient whose addiction is "contributing factor" "material" to his/her disability will no longer qualify as "disabled." For recipients living with HIV disease, this change means loss of access to medical care, medications and Social Security Income (e.g., SSI or SSDI).

What Comes Next

The law states that by June 28, 1996, SSA must notify all persons who are receiving benefits based on a DAA determination that their benefits are being terminated as of January 1. Furthermore, SSA must explain that those individuals who believe that they would still be disabled even if they stopped using drugs and alcohol must file a new application. If a recipient files a new application before July 28, 1996, SSA is required to make a determination before the January 1 termination date.

This law outlines the process and timelines for individuals currently receiving assistance because of their DAA determination who wish to seek a new determination of their disability status.

Action Steps

- Representatives of clients whose drug dependence or alcoholism is a factor material to their disability should begin immediately to collect material and other evidence to prove that these clients have other qualifying disabilities. The SSA will start sending out termination notices on June 7, and clients and their representatives need to act quickly.

- We need to advocate for clients who do not have other qualifying disabilities and ask Congress to restore their Medicaid entitlement. Losing access to Medicaid reduces access to cost-effective health and treatment services for this population.

For more information, contact Gwen Rubinstein at the Legal Action Center at 202/544–5478.

* *Compiled from information from AIDS Foundation of Chicago, San Francisco AIDS Foundation, the Legal Assistance Foundation, and the National Senior Citizens Law Center. Prepared by AIDS Project Los Angeles.*

1996 CHANGES IN SOCIAL SECURITY LAW

Termination of Benefits for Drug Addicts and Alcoholics:

What Every Advocate Should Know

I. What are the critical dates?

March 29, 1996--bill signed, affects all pending or new applications immediately

June 28, 1996--last date for SSA to notify all affected current recipients, and their representative payees, of January 1 termination

July 28, 1996--last day for new applications if an initial decision is to be assured prior to termination of benefits

January 1, 1997--eligibility ends for current recipients

II. Who is affected?

All persons for whom drug abuse or alcoholism is a "material factor contributing" to the determination of disability. This includes, at a minimum, all persons who have been screened and referred to treatment programs by TASC, but also many that TASC has not yet reached. Approximately 17,000 people in Cook County will be affected by this change.

III. What does this mean for Medicaid and Medicare coverage?

Except for the elderly and people with dependent children (AFDC recipients), adults who are no longer be "disabled" by Social Security definitions will also no longer be eligible for Medicaid or Medicare. IDPA has not yet announced what the termination process will be for current Medicaid recipients.

IV. What is the reapplication process?

Social Security has not yet made a final decision on the process. At present, Social Security is only asking people to sign a one paragraph reapplication form and fill out a new disability report and new medical releases. The new application will then be reviewed and adjudicated by the Bureau of Disability Determination

(Continued on reverse)

Services just as any other new application for SSI or SSDI is reviewed and adjudicated.

V. What should happen now?

- Start identifying clients who will be affected.
- Evaluate for other physical or mental impairments; arrange for all necessary screenings and diagnostic examinations.
- Be sure clients are visiting physicians and/or mental health treatment regularly; be sure they are reporting all conditions.
- Begin or continue drug or alcohol rehabilitation. Mental impairments, in particular, will be easier to establish for clean and sober clients.
- Gather records from evaluating and treating sources.
- Send clients in to reapply as soon as strong medical records are obtained. There is no need to wait for the June letter or the July deadline.
- Be sure all clients reapply before the July 28, 1996 deadline, even if they have not been able to obtain new medical records.
- Send new medical records in with clients, but keep a copy.
- Watch for Medicaid termination notices. File appeals if the client is still disabled.
- Know Transitional Assistance alternatives for clients who cannot meet SSA disability standards.
- Refer clients for legal assistance as necessary.

Prepared for SSI Coalition Workshop
May 4, 1996

Action A ert!!

SSI Payments Cut for People With Substance Abuse

On March 28, 1996, Congress passed H.R. 3136 the "Contract with America Advancement Act of 1996", as a part of the legislation to raise the debt ceiling. This bill, among other things, eliminates drug addiction and alcoholism (DA&A) as a basis for disability in both the Title II (SSDI) and the Title XVI (SSI) programs. President Clinton signed H.R. 3136 on Friday, March 29, 1996, enacting it into law.

Key issues in the legislation:

- ***Eliminates SSI & SSDI payments for people who are disabled because of substance abuse.***

- ***When does this take effect?***
  - ♦ <u>if you have a claim pending the change in eligibility affects you right now</u>; and

  - ♦ if you are getting SSI or SSDI payments now you will lose your benefits beginning on or after January 1, 1997.

- ***What should you do if you believe you may be affected by these new changes in SSI:***
  - ♦ If you are getting SSI benefits because of your substance abuse but feel you would qualify under another disability category go to the Social Security Administration office to reapply.

  - ♦ If you are not sure if you are receiving SSI because of substance abuse, call your local Social Security Administration office or call the national office at 1-800-772-1213 and ask if you will be affected by the new rules for receiving SSI.

<u>VERY IMPORTANT!!</u> **If you are affected by the new changes for receiving SSI take this notice with you, go to your local Social Security Administration office and state following:**

"I wish to reapply for Social Security and/or SSI disability benefits because I am disabled not due to using drugs or alcohol -- or, --I would be disabled even if drug or alcohol use stopped. I want a new medical determination of my impairments."

Please share this notice with others -- especially case managers and organizations that work with people who have substance abuse problems. For more information, contact Barbara Otto, The SSI Coalition, (312) 223-9600.

EGAL ASSISTANCE FOUNDATION OF CHICAGO

SSI ADVOCACY PROJECT SERVICIOS LEGALES

407 S. Dearborn, Suite 350 • Chicago, Illinois 60605 • (312) 427-5200
FAX (312) 427-0381
TDD (312) 427-5150

NOTICE TO ALL PERSONS RECEIVING OR APPLYING FOR SSI OR SSDI DUE TO DRUG ADDICTION OR ALCOHOLISM

If you are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance benefits (SSDI) and the Social Security Administration has determined that drug addiction and/or alcoholism is the cause of your disability:

YOUR BENEFITS AND YOUR MEDICAL COVERAGE WILL BE CUT OFF JANUARY 1, 1997 UNLESS YOU FILE A NEW APPLICATION AND SOCIAL SECURITY FINDS YOU DISABLED BASED ON AN IMPAIRMENT OTHER THAN DRUG OR ALCOHOL USE.

If you believe that drugs and alcohol are not the main cause for your disability:

YOU SHOULD IMMEDIATELY FILE A NEW APPLICATION FOR SSI OR SSDI AT YOUR LOCAL SOCIAL SECURITY OFFICE.

When you file your new application, take this notice with you and tell Social Security that you would be disabled even if your drug or alcohol use stopped.

IF YOU FILE A NEW APPLICATION BY JULY 28, 1996, SOCIAL SECURITY MUST DECIDE YOUR CASE BY JANUARY 1, 1997.

If you are not sure if you are getting SSI or SSDI because of drug addiction or alcoholism, contact your local Social Security office or call Social Security at 1-800-772-1213.

If you have an application already pending at Social Security, make sure that Social Security has all the information about all of your physical and mental impairments. Go to your doctor or clinic for regular medical care and ask them to cooperate by sending your medical records to Social Security.

SAMPLE REAPPLICATION LANGUAGE

I WISH TO REAPPLY FOR DISABILITY BENEFITS UNDER TITLE(S)____ AND___OF THE SOCIAL SECURITY ACT, BECAUSE I AM DISABLED NOT DUE TO USING DRUGS OR ALCOHOL OR I WOULD BE DISABLED EVEN IF DRUG OR ALCOHOL USE STOPPED. I WANT A NEW MEDICAL DETERMINATION OF MY IMPAIRMENT(S)

I UNDERSTAND THAT IF ALCOHOLISM OR DRUG ADDICTION IS FOUND TO BE A CONTRIBUTING FACTOR MATERIAL TO MY DISABILITY, MY BENEFITS WOULD END AS OF JANUARY 1, 1997. I UNDERSTAND THAT I MAY APPEAL THAT NEW DETERMINATION.

Published by SSA on E-Mail (4/1/96) for distribution to all adjudicatory staff.

DA+A - SSI

06/07/96

Fact Sheet on New DAA Legislation

On March 29, 1996, President Clinton signed into law Public Law 104-121, the "Contract With America Advancement Act of 1996," which affects Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) beneficiaries whose disability is based on drug addiction and/or alcoholism. Most of these changes are effective immediately.

- The new law prohibits SSDI and SSI disability benefits and Medicare coverage and Medicaid based on SSI coverage to people who are disabled and drug addiction and/or alcoholism is a contributing factor material to the determination of disability.

  This provision applies immediately to persons who file for benefits or whose cases are finally adjudicated on or after March 29, 1996.

- Persons who are currently receiving disability benefits based on drug addiction and/or alcoholism will have their benefits and health coverage terminated on January 1, 1997. Until then:

  → Their benefits will continue to be paid to a representative payee;

  → They will continue to be referred to the Referral and Monitoring Agency (RMA) in their State;

  → They must still undergo appropriate treatment for their addiction and/or alcoholism, if it is available; and

  → Their benefits will be suspended if they fail to comply with their treatment plan.

- Within 90 days (before June 28, 1996), SSA must notify all persons who are currently receiving benefits because of DAA about the new law and that they have a right to appeal (request a new medical determination) if they believe they would be disabled even if they stopped using drugs and/or alcohol.

- If a person whose benefits would terminate January 1, 1997, appeals within 120 days after enactment [before July 28, 1996], SSA must make a new medical determination on this claim no later than January 1, 1997. This determination may be appealed; but if DAA is still found to be material, benefits would terminate effective January 1, 1997.

60 day appeal - both SSI/SSDI

- SSI individuals disabled based on DAA receive full due process protections under Goldberg v. Kelly before termination of SSI benefits based on DAA.

  → This means that SSI individuals who appeal the DAA termination have the right to choose the method of appeal they want (a case review or face-to-face due process evidentiary hearing) and qualify for payment continuation.

  → If SSA does not make a new determination before January 1, 1997 for SSI individuals disabled based on DAA who qualify for payment continuation, SSI benefits will continue at the protected payment level (as long as they meet all eligibility factors) until there is a determination on the appeal.

- Beneficiaries who are incapable of managing their benefits and who have a "DAA condition" are required to have a representative payee. SSA will refer these individuals to the State drug addiction or alcoholism agency for treatment. These provisions are effective for new applications and requests for new medical determinations (appeals) filed after July 1, 1996.

  → The payee provision is not a new requirement. Field offices will follow current instructions for determining when a payee is needed.

  → The new law does, however, retain the $50 fee that organizational representative payees can collect for beneficiaries who have a DAA condition.

  → SSA is working with Federal and State agencies to develop procedures for handling treatment referrals.

06/07/96

Key DAA Legislation Implementation Dates

assume 90% will appeal x .4 x .6 / 36% - 54% paper - will be granted at DDS (1st round)

DATE	EVENT
03/29/96	Legislation Enacted
04/03/96	Inform Organizations of Legislation
05/25/96	Select Current DAA Beneficiaries to Receive Termination Notices
06/07/96-06/22/96	Mail SSDI and SSI Termination Notices
06/28/96	Statutory Deadline to Notify Beneficiaries
07/01/96	Special "DAA Condition" Provisions Effective
07/15/96-07/26/96	Train DDS Hearing Officers
07/28/96	120-Day Reapplication Period Ends
11/30/96	All SSA Reviews, Including Face-to-Face Hearings, Must Be Completed
12/13/96	Last Date to Terminate 01/97 SSI Benefits
01/01/97	Terminate RMA Contracts
01/01/97	Benefits Terminate for SSI Recipients
01/23/97	Last Date to Terminate 02/97 SSDI Benefits
02/03/97	Benefits Terminate for SSDI Beneficiaries

06/07/96

Overview of DAA Claims Process

- Beginning June 7, and concluding June 22, 1996, SSA will notify approximately **200,000** persons who are currently receiving SSDI and/or SSI benefits because of DAA that their disability benefits will terminate on January 1, 1997, under the terms of new legislation. Notices will also be mailed to the beneficiaries' representative payees and any auxiliary beneficiaries, most of whom are children.

- These notices will inform beneficiaries that they have a right to **appeal** and request a **new medical determination**. The beneficiary has **60 days** to appeal.

  → Under the new statute, if the beneficiary appeals within 120 after enactment (before July 28, 1996), SSA must make the new decision before January 1, 1997. If the beneficiary appeals on or after July 28, but within the 60-day appeal period, SSA will accept the appeal, but a decision may not be reached by January 1.

  → Special circumstances exist for persons who are receiving SSI (alone or concurrent with SSDI). If the appeal is filed within **10 days** after receiving the notice, the beneficiary may request **continuation of benefits** and **choose the method of appeal**. SSA will continue to pay benefits until the appeal has been decided. The beneficiary may choose an appeal by a "paper" **case review** or a **face-to-face evidentiary hearing**.

- The beneficiary may receive information about the new law or this notice at a field office (FO) or through the teleservice center, but the appeal must be filed in writing.

- At the FO (or by phone if the beneficiary is unable to come to the FO), the beneficiary will receive an explanation of the new law and why SSA believes it applies (because disability is based on DAA). The beneficiary will file the appeal, (if receiving SSI) elect a method of appeal, and provide SSA with information about his current medical condition and sources of treatment.

  → It is possible that the individual **should not have received a termination notice** because his **record was not coded correctly** or because a prior decision was made that DAA is **not material** to his disability.

  → If the FO can determine that the beneficiary has been misclassified as "DAA," then the record will be corrected and the beneficiary will receive a notice that benefits will not terminate.

  → If the file appears to be in order, the FO will forward the file to the State disability determination services (DDS).

- The DDS will first determine that the claim has not been misclassified. If not, then it will proceed to develop and evaluate current medical evidence to determine if the individual is disabled; and if so, whether DAA is material to the finding of disability.

- If the DDS cannot make a favorable determination (i.e., the individual is found to be not disabled, or disabled but DAA is material), then:

  → The claim will proceed to a disability hearing officer, if a face-to-face hearing was elected (SSI); or

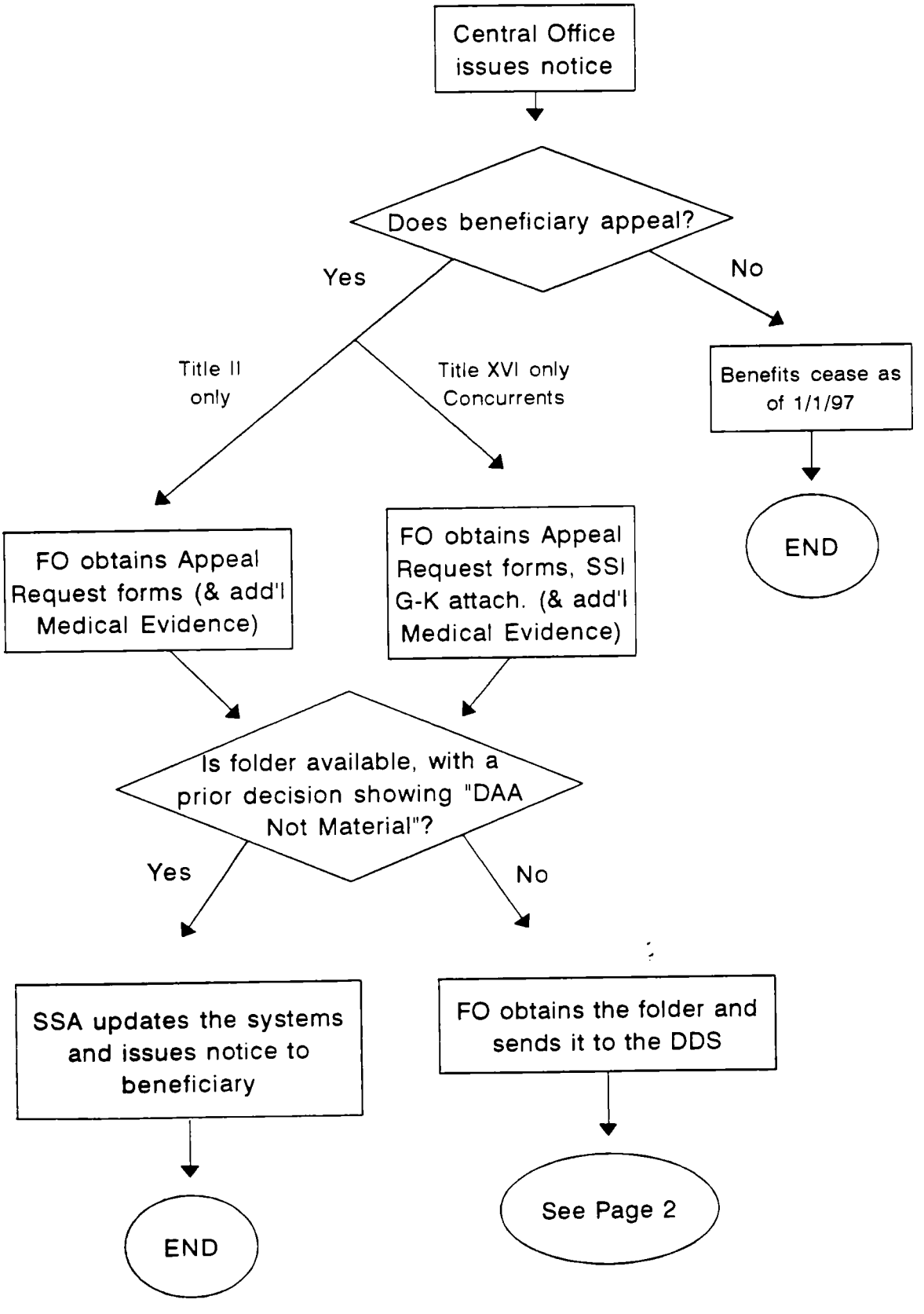
  → The beneficiary is informed of the determination and may further appeal to an administrative law judge (ALJ) (SSDI and SSI if face-to-face was not elected).

- The beneficiary may be represented by an attorney at the hearing. He may subpoena witnesses to testify, cross-examine witnesses and otherwise present evidence of disability. Though the hearing is not taped, and no transcript prepared, the hearing officer's notes provide a record of the proceedings.

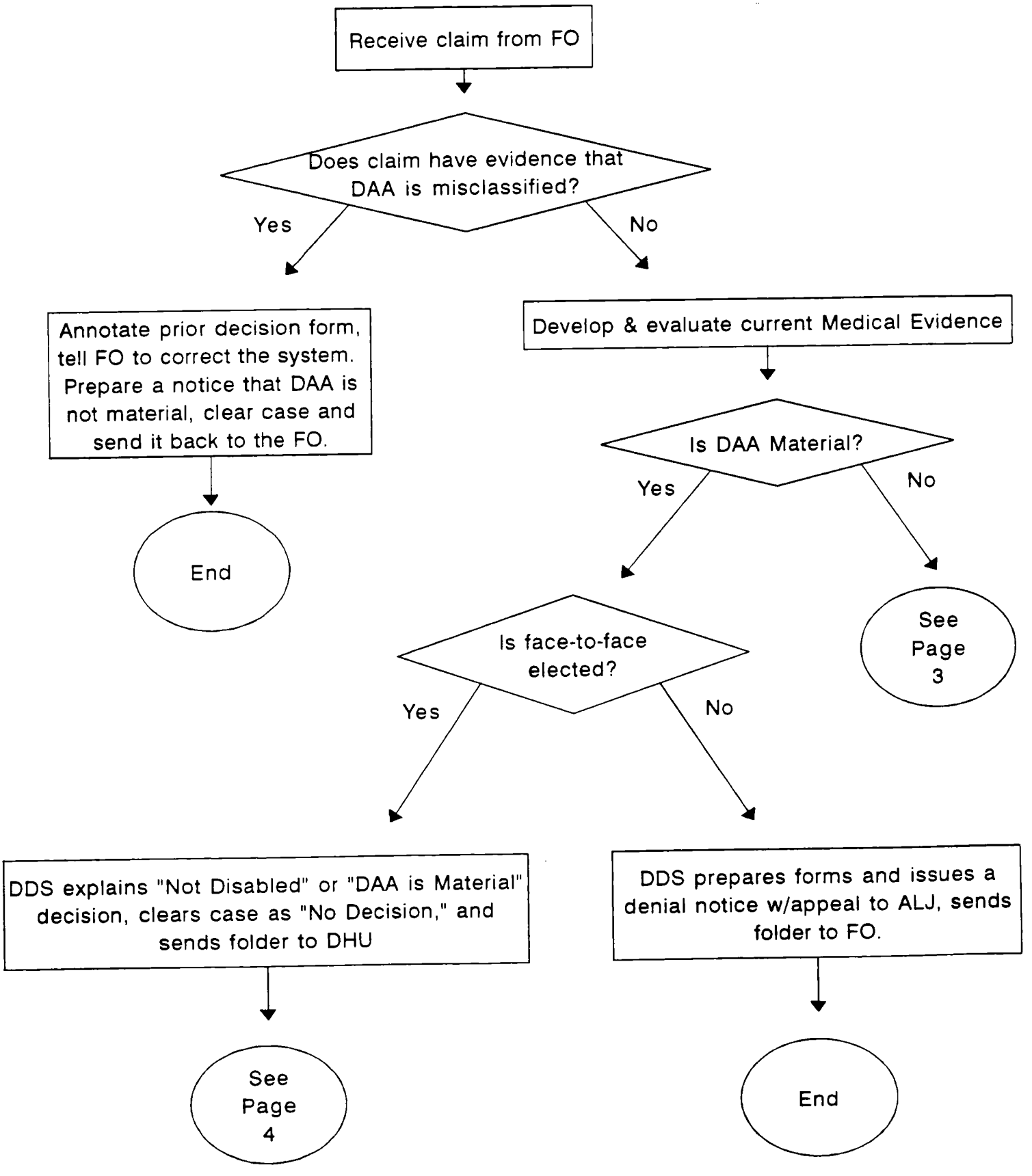
- If the hearing officer cannot make a favorable determination, then the claim may be further appealed to an ALJ. However, SSI benefits are not continued after the hearing determination has been made.

- At every step in the process, from FO interview through hearing officer decision, DAA cases are treated as the **highest priority** workload. SSA is committed to expediting and streamlining the process to ensure that these reviews are completed in time to terminate benefits in January 1997.

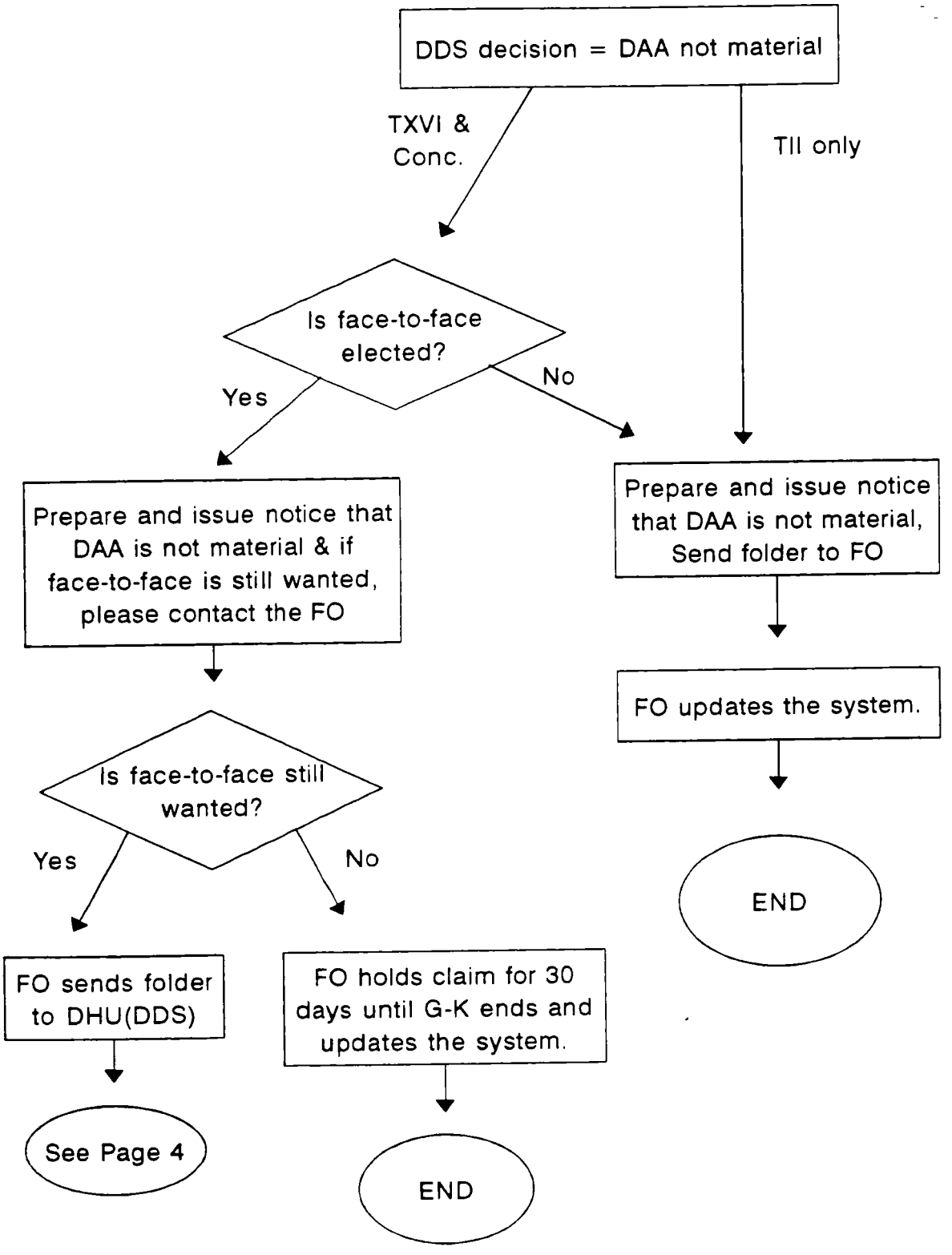
New DA&A Process
Field Office



Disability Determination Services Process

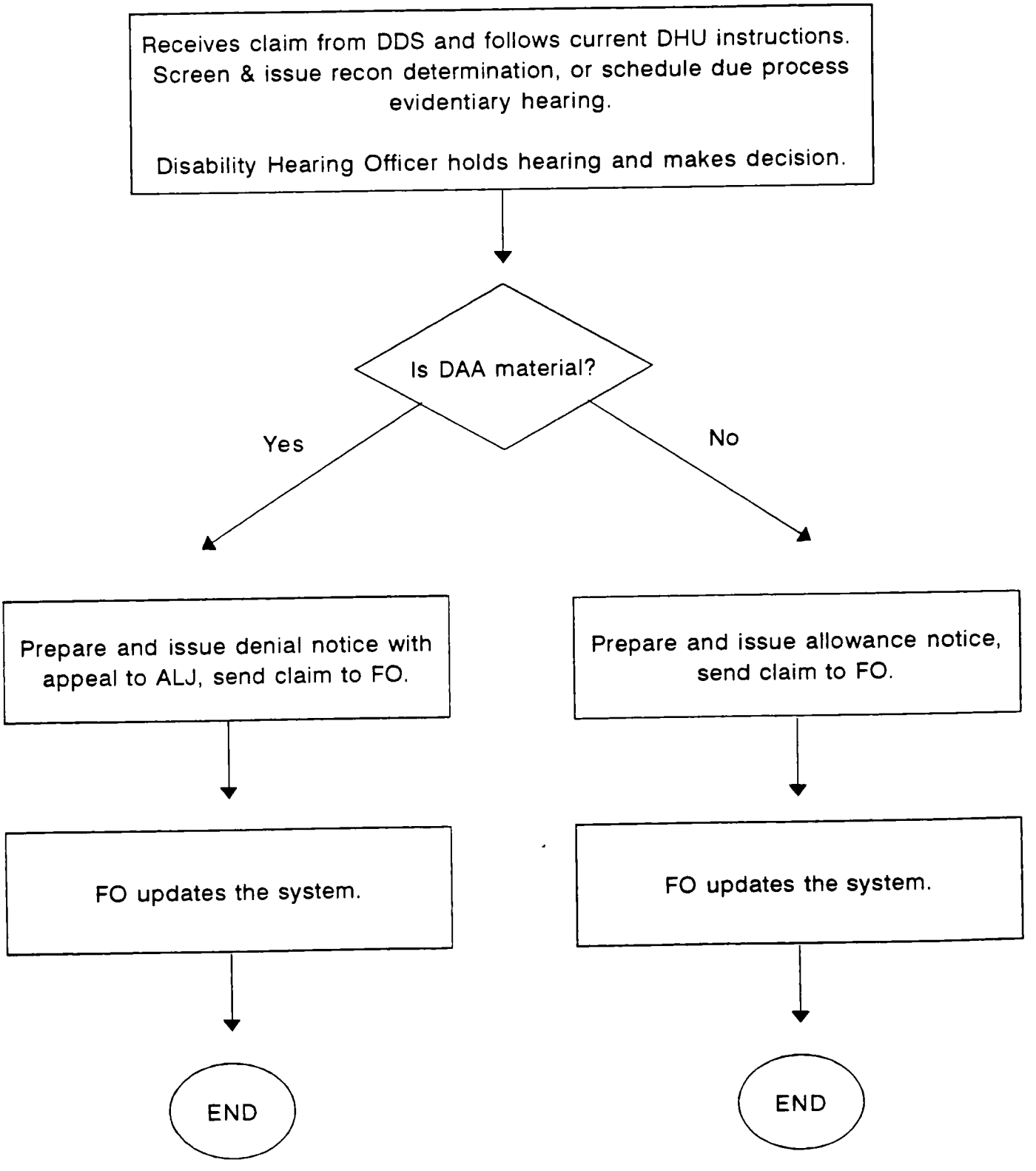


DDS Process - con't



Disability Hearings Unit Process

TXVI and Concurrents



DA+A - SSI

- 6-K vs 30 days
* - What does it mean to lose 6-K
  - What flex > 7/28 - legally
  - Process > 7/28 - How long wait if initial HIV different
  - 60 days?

SSA: Why does it take so long?

Hon

6-K entitles face to face
Disadv: 1/1: no det →

Jan 1 → Nov complete reviews
shortage of face to face people

1 - 1½ yr wait - new

DA+A - SSI

MAXIMUS

1203 Overview Drive
Jacksonville, Arkansas
(501)985-2788 Fax (501)985-2789

March 21, 1996

Carol H. Rasco
Assistant to the President for
Domestic Policy
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Carol:

I appreciate your interest in the McCain Bill which will eliminate alcohol and drug addiction as qualifying disabilities for SSI and SSDI. Diane Fortuna and other members of your staff have been very helpful in their efforts to evaluate new cost and benefit data that was not originally considered when the "Senior Citizens Right to Work Act" passed the House.

I am concerned that the bill may move faster than originally thought. It is my understanding that the bill could be considered by the Senate as early as this week. We have not as yet received any information from the Social Security Administration in response to the data MAXIMUS presented to your staff. I fear that another decision will be made by Congress without the benefit of the improved effectiveness of the program since the Referral and Monitoring agencies became operational. The Social Security Administration may be quite willing to let this program expire because of past bad press, but I fear this may be shortsighted. I, also, think the numbers being bantered about may not jive because of differences in reporting systems.

Obviously, MAXIMUS is concerned with retaining their contracts, but we believe the numbers speak for themselves. Since we took over the Referral and Monitoring Agency (RMA) program twenty months ago, there have been some significant accomplishments:

(1) Over 45% of the beneficiaries referred to case management have been referred to licensed treatment facilities. The RMAs have placed over 19,300 drug addicts and alcoholics (DA&As) and nearly 800 individuals have completed treatment ahead of time.

(2) Over 12,500 cases have been recommended for termination due to non-compliance with program requirements.

(3) Fraud and abuse in the program has been reduced with over 5,200 cases in which benefit checks were sent to incarcerated or deceased beneficiaries.

It is understandable that taxpayers have been unhappy with the program in the past. They have seen tax dollars funding treatment of alcohol and drug abusers and know nothing of the changes in the program. The fact is that 75% to 80% of DA&As will remain on the disability rolls even if drug and alcohol addiction is eliminated as a disability category. This is the Congressional Budget Office estimate. Under the bill as proposed, drug and alcohol abusers can continue to receive benefits for a substantial medical disability and continue to abuse drugs and alcohol although their treatment plan may require treatment for their addiction. Unless there is a treatment plan for drug and alcohol abusers that is effectively managed, these beneficiaries have no chance of achieving substantial gainful activity and will continue to be a burden to taxpayers. This is not what the public or Congress intends. The cost savings generated by the program was not considered by Congress or the Social Security Administration. If the RMA program is continued into FY 1997 a cost savings of $25 million will be realized. These savings are realized through the termination of benefits for beneficiaries not in compliance with treatment, through reduction of program fraud and abuse, and through successful treatment.

I wanted to let you know what is happening to this program. It would be helpful in discussions with Senator McCain to have the information from the Social Security Administration. I, also, want to let you know that "60 Minutes" is contemplating a piece on the program. Of course, you never know the slant, but it is in everyone's interest to be on top of the issue.

Again, your staff is thoughtful and efficient. I am in D.C. quite often now. I am continuing to work on the Child Support Enforcement provisions of the Welfare Reform Bill. We really need the child support provisions in the Welfare Reform Bill to be adopted soon. I love the new Clinton Welfare reform spot. Child support professionals are most happy that it leads off with stronger child support enforcement. I am, also, working with fathers' groups and advocates through the National Child Support Enforcement Association. I would love to see you outside of business. If you ever get out of the office long enough to have lunch, give me a call at home or through my voice mail at 1-800-368-3758. Let me know if there is anything I can do for you or the Administration.

Sincerely,

Judy Jordan
Vice-President

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

To: CR BJ2 RE DF

CC Molly B.

JUN 11 1996

MEMORANDUM TO THE DIRECTOR

THROUGH: Ken Apfel

FROM: Jack Smalligan

Fyi. - Ken Apfel

RE: Implementation of SSI and SSDI Drug Addiction and Alcoholism Provision in Debt Limit Bill

SSA is beginning to implement the provision in the debt limit bill to deny Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) on the basis of drug addiction and alcoholism (DA&A). The President's budget included the SSI DA&A proposal and we did not object to using the SSDI DA&A provision as an offset to pay for increasing the Social Security earnings test. Together with the DPC we have been monitoring SSA's implementation of this provision and met with SSA last week. Below is a summary of the key points.

SSA will mail termination of benefits notices to approximately 200,000 SSI and SSDI beneficiaries between June 7 and June 21. Benefits will end January 1, 1997. SSA expects about 80% of these individuals to continue receiving benefits on the basis of other disabilities so that about 40,000 would ultimately lose benefits. Those who appeal within ten days will have the right to a face to face hearing and a continuation of benefits until the hearing is conducted. Those who appeal by July 28 will have their appeal given priority over other disability application work. SSA's target is to complete all review by the end of November so that January payments can be stopped where appropriate.

Concerns have been raised that SSA needs to ensure that there is no interruption of benefits for the large number of beneficiaries who will continue to receive benefits on the basis of other disabilities. Beneficiaries who exercise their appeal rights on a timely basis are not at risk but those who appeal later could experience a lapse in benefits while their case is considered. SSA's policy is that DA&A cases will receive the same rights as other cases involving the termination of benefits. Those who appeal within ten days and those who can show good cause for not appealing within ten days will continue to receive benefits, even after the January 1 deadline. SSA may not be able to complete all of the face to face hearings required for this group by the January deadline because these hearings require specially trained staff, most of whom are not located where DA&A cases are concentrated. We will continue to monitor SSA's implementation of this provision and will alert you if any issues develop.

CC: Larry Haas

cc Jack Smalligan OMB ← DA+A - SSI
From Diana Fortuna FYI DRAFT COPY

Discussion Paper on Continuation of RMA Program

Issue:

Continuation of the Referral and Monitoring Agency (RMA) program for disabled beneficiaries entitled independent of their drug addiction or alcoholism (DAA).

Background:

On February 14, 1996, SSA met with representatives of MAXIMUS, an RMA contractor for SSA, to discuss the RMA contract and the issue of continuing the RMA program in the event that legislation is enacted to repeal current treatment and monitoring requirements. During that meeting, MAXIMUS provided SSA with data to support their position, which SSA agreed to review. MAXIMUS contends that continuation of the RMA program is essential to: 1) Ensure accountability, 2) Eliminate fraud and abuse, and 3) Save Federal dollars in administering the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs.

Discussion:

The RMA program was established to ensure that beneficiaries disabled by DAA receive and comply with a treatment plan in an effort to rehabilitate them and help these individuals achieve independence. SSA has RMA contracts in all States, with 42 States receiving RMA services from MAXIMUS.

The RMA program was an effective way to meet the requirements of the law that beneficiaries disabled by DAA receive treatment for their addiction. However, legislation enacted March 29, 1996 [(P.L. 104-121) The Senior Citizens Right to Work Act of 1996], eliminates the payment of benefits to those disabled solely due to DAA, thus eliminating the need to continue the RMA program.

MAXIMUS, however, has recommended continuing the existing referral and monitoring activities with beneficiaries who, under the Senior Citizens Right to Work Act, continue to receive SSI disability and/or SSDI benefits independent of their ongoing substance abuse conditions. We have reviewed their proposal and found that the statements they make regarding past successes and future savings to SSA are quite misleading, as are the data referred to in their proposal. Therefore, based on our review of MAXIMUS' proposal, we are unable to justify or recommend continuation of the RMA program. Attached is a detailed analysis of their proposal.

Attachment:

DRAFT COPY

Analysis of MAXIMUS Proposal

Proposal:

Continuation of the Referral and Monitoring Agency (RMA) program for disabled beneficiaries entitled independent of their drug addiction or alcoholism (DAA)

Discussion:

- First, Social Security law does not require disability beneficiaries--entitled independent of their addictions--to participate in treatment programs. And, unlike individuals whose disability is based all or in part on their DAA, treatment and recovery from DAA will not result in cessation of disability benefits for these individuals. Similarly, noncompliance with treatment will not result in the suspension of benefits under current law.

  MAXIMUS has suggested that SSA could suspend/terminate benefits to disabled individuals with addictions--despite other disabling impairments--based on regulations which require beneficiaries to follow prescribed treatment in order to receive benefits. Notwithstanding the legal implications of terminating benefits to a disabled individual, SSA regulations specifically prohibit terminating benefits under this provision, unless, among other things, 1) the treatment is prescribed by the beneficiary's physician, and 2) the beneficiary's mental limitations would not prevent the ability to follow prescribed treatment. Since an RMA treating source is not the beneficiary's physician, and the nature of substance addiction precludes mental ability to follow prescribed treatment, SSA could not use this regulation to terminate those with addictions (Adams v. Weinberger)[1]. Accordingly, most of the program savings that could result from a referral and monitoring function will no longer exist.

- Second, SSA program data for the nation for the last 9 months of calendar year 1995, indicate that less than 3,000 individuals have had any benefits suspended for noncompliance with treatment. Some of these suspensions, however, will likely be reversed when the beneficiary has the opportunity to explain the reason for noncompliance. These program data are substantially different than the data MAXIMUS reports. One of the primary reasons for this difference is the slow, error-prone, paper-based communication among RMAs and SSA field offices (FOs).

---

[1] U.S. Court of Appeals, eighth circuit--SSA's decision to terminate benefits to an individual disabled by alcoholism under this regulation was overturned because the inability to voluntarily control substance abuse prohibits ability to follow prescribed treatment.

DRAFT COPY

For example, MAXIMUS reports over 12,000 cases being recommended for termination due to noncompliance with treatment. In fact, a report of noncompliance from an RMA to an SSA field office results in a suspension of benefits with notification to the beneficiary's representative payee. Often, after the beneficiary or representative payee explains the reason for noncompliance to the field office, (e.g., hospitalization) the suspension of benefits is retroactively removed and full benefits are restored. When the beneficiary is able to resume treatment, the RMA would be notified. The RMA would be unaware, however, that their referral for noncompliance with treatment did not result in a loss of benefits.

In some instances, the weaknesses in a paper communication process affected MAXIMUS RMAs only. For example, SSA program data include situations in which a beneficiary who moved among States was reported for noncompliance with treatment requirements by two MAXIMUS RMAs, while a third MAXIMUS RMA reported the individual in treatment.

Additionally, as with any paper reporting process, incorrect/impossible Social Security Numbers (SSNs) resulting from omission or transposition of digits has impaired the effectiveness of communications among FOs and the RMAs.

- Third, MAXIMUS alleges that the RMA program is the only proven way to reduce fraud and abuse. To substantiate this allegation, MAXIMUS states that they identified over 2,000 incarcerated individuals and 1,200 deceased individuals improperly being sent benefit checks that would not have been otherwise discovered by SSA.

With respect to deceased individuals, virtually all U.S. deaths are reported to SSA by various sources, and it is highly unlikely that the 1200 death reports cited by the RMA would not have been included in the approximately 2 million reports of death SSA receives each year. SSA encourages timely reporting of deaths by any knowledgeable source. However, over 90 percent of beneficiary death reports to SSA are by friends, relatives, or funeral directors within an average of 14 days of the date of death. Another 5 percent of death reports are received from postal authorities, institutions and nursing homes. The remaining 5 percent come from State vital statistics records and data matching programs with other Federal and State benefit paying agencies.

Regarding incarcerated individuals, SSA generally identifies prisoner/inmate beneficiaries through its agreements with all States, the Federal Bureau of Prisons, and various local penal institutions. SSA is in the process of expanding the number of agreements to include virtually all penal institutions in order to ensure timely reporting of all incarcerated beneficiaries.

Due to the lag in paper communication between RMAs and FOs, SSA would have no reason to act on the RMA's report, since the beneficiary would in all

probability already be in non-payment status. However, MAXIMUS would believe it had detected and reported a termination action to SSA. In fact, a recent reconciliation of program data with MAXIMUS data files found over 11,000 individuals not in benefit status, but still in the MAXIMUS caseload.

- Finally, MAXIMUS alleges that continuation of the RMA program will produce savings to SSA of at least $25 million per year. There is, however, no explanation of how this would be accomplished. We acknowledge that successful treatment could improve the overall health of individuals with addictions, and possibly prevent or lessen permanent organ damage. Thus, such individuals may require less Medicare/Medicaid services. However, these individuals would still qualify for benefits based on their other disabling impairment(s).

Conclusion:

Although most of the differences between SSA program data and the data MAXIMUS reports in support of continuing RMAs may be attributable to weaknesses in the communication process, this is not true for all MAXIMUS data. For example, for 36 of its 42 States for the period May 1, 1994 to December 31, 1995, MAXIMUS' proposal reports a caseload of 42,503 case referrals with 45 percent of the cases in treatment, 2 percent of the cases completed treatment, and 54 percent of its caseload recommended for termination. No cases are reporting as pending treatment.

SSA program data for the same States for the same time period, reflect 98,735 case referrals with 12.3 percent of the cases in treatment, 1.5 percent completed treatment (including cases in which treatment is determined unproductive) and no more than 5.2 percent of the caseload ever reported as noncompliant. SSA program data also indicate that 80.4 percent of all referrals made during this time period are pending treatment. The remaining .6 percent may have been in treatment at some point, but were terminated from the RMAs workload for reasons such as moving out of the area, incarceration, hospitalization or termination of SSA benefits.

Inasmuch as the program data refute the savings reported by MAXIMUS from RMA services, a detailed rebuttal of their cost/benefit analysis has not been undertaken. It is noted, however, that MAXIMUS' analysis incorrectly cites the cost of the RMA program. Including SSA costs, fiscal year 1996 costs for RMAs are estimated to be $196 million; not the $50.2 million cited by MAXIMUS.

Considering actual program costs and program data, there is no possibility that RMA's could be cost beneficial after implementation of the Senior Citizens Right to Work Act.

DA+A - SSI

EXECUTIVE OFFICE OF THE PRESIDE
N T EXECUTIVE OFFICE OF THE PRESIDE
N T

29-Mar-1996 06:23pm

TO: (See Below)

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: Disability issues in debt ceiling bill

A bunch of things on disability will happen when the President signs the social security earnings test attached to the debt ceiling bill today; here's a recap.

1. Drug addiction and alcoholism will no longer be reasons to get on SSI or SSDI. The bill language makes this change effective immediately, which means that the day the bill is signed (which will presumably be this weekend), SSA will no longer take applications with these diagnoses. People currently eligible through these diagnoses will remain eligible till January 1997, presumably giving them time to either transition off or refile under another disability.

2. The Referral and Monitoring Agencies that make sure DA&A people are in treatment have been arguing to us that they should not be disbanded and their contracts cancelled when the DA&A legislation goes through. They say that the rolls will still include 75-80% of this population through other diagnoses, and that we will be sorry if we don't monitor them.

   While this bill does not eliminate them or even mention them, CBO's scoring of the bill assumes that these rather expensive contracts are ended.

   We have met with Maximus, which has most of these contracts, to hear their arguments as to why SSA has the administrative power to keep them in existence. (Carol, you got a letter from someone at Maximus the other day on this.) It isn't clear if they do, and particularly why they would be cost effective, since we would lose the current law on DA&A that you can drop people from the rolls if they don't stay in treatment.

   Maximus's argument to keep these contracts rests on the notion that SSA should vigorously enforce an obscure regulation that says that people on SSI/SSDI have to follow

their treatment to keep their benefits. The problem with this argument is that if it is applied only to DA&A types, we would get sued by their advocates for unequal treatment. And if it is applied to everyone (i.e., you must follow doctor's orders to get benefits), we would probably have the entire disability community on our heads.

3. The blind will be delinked from the old in terms of how much they can earn before they lose benefits. I heard that Senator Bingaman was pushing an amendment to add in the blind, but Secretary Rubin called him and urged him to drop it. While obviously the importance of getting the debt ceiling increased is paramount, I wonder whether the fact of that call will get out to the blind community, which has been asking for our support (in vain), and if it does whether we can say that the Secretary was not so much fighting that provision as he was trying to get out as clean a debt limit bill as possible.

4. Our 97 budget proposal on CDR's will pass. This will not appropriate money for CDR's but will allow money to be appropriated without it violating the budget caps, and will allow us to greatly increase the number of CDR's we are doing, up to something like a million a year if current trends hold and funds are appropriated.

   If worried advocates ask us whether we are recreating the Reagan purge, we can point out that we are just enforcing the law that in the SSDI program CDR's must be done every three years for those with medical improvement expected or possible; and seven years for those for whom medical improvement is not expected. Also, there are now statutory protections that didn't exist then. Finally, there is the legitimate argument that if we don't do this the program is open to much more criticism, including proposals like time-limiting benefits.

   (Judy Chesser of SSA tells me that all the laws about when to do CDR's apply mostly to SSDI and not to SSI. Apparently this legislation makes the two programs consistent -- i.e., increases the requirements to do CDR's on SSI. And no one has focused on this fact -- at least as of yet. But it is pretty indefensible to have SSDI be tougher than SSI.

Distribution:

TO: Carol H. Rasco

CC: Kenneth S. Apfel
CC: William White
CC: Molly Brostrom
CC: Jeremy D. Benami
CC: Elizabeth E. Drye
CC: Richard E. Green
CC: Jack A. Smalligan

ODCLCA QUICK FAX

(202) 482-7112 - Voice / (202 482-7153 - Fax)

4/15/96

TO: Diana Fortuna

cc Jack Smalligan, OMB

FROM: Judy Chesser

COVER + 5 **pages**

Please call me.

MAXIMUS
cc: Brian
Diane
Sandra

SPECIAL DCLCA D.C. TRANSMITTAL

DATE: 1 1 TIME :

DELIVERED BY: FAX ☐ Shuttle ☐ Other _____

RESPONSE FROM JUDY NEEDED BY: DATE: 1 1 TIME: :

ATTN: Paulette/Regina

Please take the following action: Please give to Jack Camilleri to give to Judy.

TO: JUDY L. CHESSER

THRU: Diane B. Garro _____
Jack Camilleri _____

FROM: Karen Jennings 4/15/96

SUBJECT: Discussion Paper and Analysis of MAXIMUS Proposal to Continue the RMA Program for SSI Disability and SSDI Beneficiaries Entitled Independent of their Substance Addictions--ACTION

REMARKS: Attached is our proposed response to the information we received on the subject proposal from the White House.

Please give me a call if you have any questions.

DECISION NEEDED:

Approve: _____ Disapprove: _____ Date: _____

COMMENTS FROM JUDY:

Discussion Paper on Continuation of RMA Program

Issue:

Continuation of the Referral and Monitoring Agency (RMA) program for disabled beneficiaries entitled independent of their drug addiction or alcoholism (DAA).

Background:

On January 19, 1996, the Wexler Group--a group representing MAXIMUS' interests--sent a memorandum to the White House addressing the issue of continuing the RMA program in the event that legislation is enacted to repeal current treatment and monitoring requirements. Included in the memo was a one-page report from MAXIMUS, an RMA contractor for SSA. MAXIMUS contends that continuation of the RMA program is essential to: 1) Ensure accountability, 2) Eliminate fraud and abuse, and 3) Save Federal dollars in administering the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs.

Discussion:

The RMA program was established to ensure that beneficiaries disabled by DAA receive and comply with a treatment plan in an effort to rehabilitate them and help these individuals achieve independence. SSA has RMA contracts in all States, with 42 States receiving RMA services from MAXIMUS.

The RMA program was an effective way to meet the requirements of the law that beneficiaries disabled by DAA receive treatment for their addiction. However, legislation enacted March 29, 1996 [(P.L. 104-121) The Senior Citizens Right to Work Act of 1996], eliminates the payment of benefits to those disabled solely due to DAA, thus eliminating the need to continue the RMA program.

MAXIMUS, however, has recommended continuing the existing referral and monitoring activities with beneficiaries who, under the Senior Citizens Right to Work Act, continue to receive SSI disability and/or SSDI benefits independent of their ongoing substance abuse conditions. We have reviewed their proposal and found that the statements they make regarding past successes and future savings to SSA are quite misleading, as are the data referred to in their proposal. Therefore, based on our review of MAXIMUS' proposal, we are unable to justify or recommend continuation of the RMA program. Attached is a detailed analysis of their proposal.

Attachment:

DAA - SSI

Analysis of MAXIMUS Proposal

Proposal:

Continuation of the Referral and Monitoring Agency (RMA) program for disabled beneficiaries entitled independent of their drug addiction or alcoholism (DAA).

Discussion:

- First, Social Security law does not require disability beneficiaries--entitled independent of their addictions--to participate in treatment programs. And, unlike individuals whose disability is based all or in part on their DAA, treatment and recovery from DAA will not result in cessation of disability benefits for these individuals. Similarly, noncompliance with treatment will not result in the suspension of benefits under current law.

  MAXIMUS has suggested that SSA could suspend/terminate benefits to disabled individuals with addictions--despite other disabling impairments--based on regulations which require beneficiaries to follow prescribed treatment in order to receive benefits. Notwithstanding the legal implications of terminating benefits to a disabled individual, SSA regulations specifically prohibit terminating benefits under this provision, unless, among other things, 1) the treatment is prescribed by the beneficiary's physician, and 2) the beneficiary's mental limitations would not prevent the ability to follow prescribed treatment. Since an RMA treating source is not the beneficiary's physician, and the nature of substance addiction precludes mental ability to follow prescribed treatment, SSA could not use this regulation to terminate those with addictions (Adams v. Weinberger)[1]. Accordingly, most of the program savings that could result from a referral and monitoring function will no longer exist.

- Second, SSA program data for the nation for the last 9 months of calendar year 1995, indicate that less than 3,000 individuals have had any benefits suspended for noncompliance with treatment. Some of these suspensions, however, will likely be reversed when the beneficiary has the opportunity to explain the reason for noncompliance. These program data are substantially different than the data MAXIMUS reports. One of the primary reasons for this difference is the slow, error-prone, paper-based communication among RMAs and SSA field offices (FOs).

---

[1] U.S. Court of Appeals, eighth circuit--SSA's decision to terminate benefits to an individual disabled by alcoholism under this regulation was overturned because the inability to voluntarily control substance abuse prohibits ability to follow prescribed treatment.

For example, MAXIMUS reports over 12,000 cases being recommended for termination due to noncompliance with treatment. In fact, a report of noncompliance from an RMA to an SSA field office results in a suspension of benefits with notification to the beneficiary's representative payee. Often, after the beneficiary or representative payee explains the reason for noncompliance to the field office, (e.g., hospitalization) the suspension of benefits is retroactively removed and full benefits are restored. When the beneficiary is able to resume treatment, the RMA would be notified. The RMA would be unaware, however, that their referral for noncompliance with treatment did not result in a loss of benefits.

In some instances, the weaknesses in a paper communication process affected MAXIMUS RMAs only. For example, SSA program data include situations in which a beneficiary who moved among States was reported for non compliance with treatment requirements by two MAXIMUS RMAs, while a third MAXIMUS RMA reported the individual in treatment.

Additionally, as with any paper reporting process, incorrect/impossible Social Security Numbers (SSNs) resulting from omission or transposition of digits has impaired the effectiveness of communications among FOs and the RMAs.

- Third, MAXIMUS alleges that the RMA program is the only proven way to reduce fraud and abuse. To substantiate this allegation, MAXIMUS states that they identified over 2,000 incarcerated individuals and 1,200 deceased individuals improperly being sent benefit checks that would not have been otherwise discovered by SSA.

With respect to deceased individuals, virtually all U.S. deaths are reported to SSA by various sources, and it is highly unlikely that the 1200 death reports cited by the RMA would not have been included in the approximately 2 million reports of death SSA receives each year. SSA encourages timely reporting of deaths by any knowledgeable source. However, over 90 percent of beneficiary death reports to SSA are by friends, relatives, or funeral directors within an average of 14 days of the date of death. Another 5 percent of death reports are received from postal authorities, institutions and nursing homes. The remaining 5 percent come from State vital statistics records and data matching programs with other Federal and State benefit paying agencies.

Regarding incarcerated individuals, SSA generally identifies prisoner/inmate beneficiaries through its agreements with all States, the Federal Bureau of Prisons, and various local penal institutions. SSA is in the process of expanding the number of agreements to include virtually all penal institutions in order to ensure timely reporting of all incarcerated beneficiaries.

Due to the lag in paper communication between RMAs and FOs, SSA would have no reason to act on the RMA's report, since the beneficiary would in all

probability already be in non-payment status. However, MAXIMUS would believe it had detected and reported a termination action to SSA. In fact, a recent reconciliation of program data with MAXIMUS data files found over 11,000 individuals not in benefit status, but still in the MAXIMUS caseload.

- Finally, MAXIMUS alleges that continuation of the RMA program will produce savings to SSA of at least $25 million per year. There is, however, no explanation of how this would be accomplished. We acknowledge that successful treatment could improve the overall health of individuals with addictions, and possibly prevent or lessen permanent organ damage. Thus, such individuals may require less Medicare/Medicaid services. However, these individuals would still qualify for benefits based on their other disabling impairment(s).

? I thought they had a route to it.

Conclusion:

Although most of the differences between SSA program data and the data MAXIMUS reports in support of continuing RMAs may be attributable to weaknesses in the communication process, this is not true for all MAXIMUS data. For example, for 36 of its 42 States for the period May 1, 1994 to December 31, 1995, MAXIMUS' proposal reports a caseload of 42,503 case referrals with 45 percent of the cases in treatment, 2 percent of the cases completed treatment, and 54 percent of its caseload recommended for termination. No cases are reporting as pending treatment.

why diffs?

SSA program data for the same States for the same time period, reflect 98,735 case referrals with 12.3 percent of the cases in treatment, 1.5 percent completed treatment (including cases in which treatment is determined unproductive) and no more than 5.2 percent of the caseload ever reported as noncompliant. SSA program data also indicate that 80.4 percent of all referrals made during this time period are pending treatment. The remaining .6 percent may have been in treatment at some point, but were terminated from the RMAs workload for reasons such as moving out of the area, incarceration, hospitalization or termination of SSA benefits.

Inasmuch as the program data refute the savings reported by MAXIMUS from RMA services, a detailed rebuttal of their cost/benefit analysis has not been undertaken. It is noted, however, that MAXIMUS' analysis incorrectly cites the cost of the RMA program. Including SSA costs, fiscal year 1996 costs for RMAs are estimated to be $196 million; not the $50.2 million cited by MAXIMUS.

Considering actual program costs and program data, there is no possibility that RMA's could be cost beneficial after implementation of the Senior Citizens Right to Work Act.