WHITE HOUSE ALTERNATIVE TO REGO II PROPOSAL
TO ELIMINATE REPRESENTATIVE'S FEE PROGRAM

Description:

Under this proposal, SSA would:

- Eliminate withholding and direct payment of attorney fees;
- Replace percentage-based fee calculations with a cap of $3250;
- Require representatives who charge a fee equal to or less than the cap to negotiate and collect such a fee without SSA involvement;
- Retain the fee petition process for those representatives who do not negotiate with their clients a fee equal to or less than the cap;
- Initiate proceedings to suspend or disqualify representatives only when the claimant notifies SSA that they have been charged in excess of the cap or the authorized fee petition amount; and
- Allow a court rendering a judgment in the case of a represented claimant to determine a reasonable fee for such judicial representation.

Optional feature:

- Charge and collect a $200 user's fee from representatives who choose the fee petition process. The user's fee would be adjusted through regulations as necessary.

Discussion:

This alternative, which combines the elements of a capped fee with a fee petition option, would relieve SSA of most of the activity surrounding the representative's fee process. It is unlikely that this alternative will fully satisfy attorneys because it does not provide for withholding or direct payment; however, it would satisfy their concern about being able to charge adequate fees in complex cases. Under this alternative, we could realize up to three quarters of the dollar and workyear savings estimated in our REGO II proposal (i.e., $2500 cap and no fee petition).

With the introduction of a users' fee option to the fee petition process SSA would realize all of the dollar savings and slightly more than half of the workyear savings originally projected under our REGO II proposal. However, SSA would need authorization to adjust the user's fee--through regulations--as soon as possible to cover changes in the costs of this process due to inflation, the number of fee petitions actually received, or the discovery of additional factors not originally included in the estimate. We would require that the legislation specify that all income from the user fee be returned to SSA to process debt management/collection activities associated with the users' fee, and not be subject to SSA's LAE.

Under this alternative ~~SSA is:~~

- Establishing a cap on the amount of fees representatives may charge without SSA's authorization provides some protection for claimants against being overcharged by their representatives;

- -- There is some risk that the cap could become the standard--and not just the maximum--fee; however, claimants would be apprised through notices and other public information efforts that the cap is the maximum fee, and that they could negotiate a fee up to that amount.

- Setting the cap at $3250 permits representatives to charge fees that would adequately compensate them in the majority of cases;

  -- Available data for FY 1994 reflect that only 27 percent of fees paid were for more than $3250. [Note: The percentage of fees authorized over $3250 might be greater; SSA does not keep fee data on cases with no past-due benefits or SSI cases.)

  -- Compared to $2500 (the cap originally proposed under REGO II), a $3250 cap more adequately reflects a reasonable fee for difficult cases, and thus should minimize the number of fee petitions filed. But if the cap becomes the standard fee, claimants could end up paying--on average--35 percent more than the current average fee of $2400.

- Retaining the fee petition process provides a way for representatives to pursue fee authorization from SSA in those cases in which a reasonable fee might be higher than the statutory cap. Actual fee petition involvement will depend on representative behavior in response to certain risk/benefit factors.

  -- For instance, an increase in the number of fee petitions might occur if representatives (1) believed that the fee petition process would yield a higher fee (SSA might actually authorize a fee less than the statutory cap); (2) could endure a potentially lengthy wait for fee authorization; and (3) were willing to assume the risk that claimants would spend their past-due benefits pending authorization of a fee. (Note: This could lead representatives to arrange an up-front retainer or escrow account).

  -- On the other hand, a decrease in the number of fee petitions might occur if representatives (1) believed that they could get their fees quicker without petitioning (even when they believed they would have been entitled to more than the cap); and (2) wanted to reduce the risks associated with waiting for fee authorization.

With the addition of the users' fee option:

- SSA would be relieved of the administrative costs associated with the fee petition process, and thereby reduce the uncertainty associated with predicting representative behavior. However, it would continue and possibly increase SSA's FTE involvement in the current fee petition process. Moreover, it would require additional FTEs to process the debt/management collection of the users' fee at a time when SSA must reduce the number of FTEs involved in the current process in order to meet other budgetary commitments. In addition, this is not a process that lends itself to contracting out because of the linkage to SSA's adjudicative processes;

-- This option might create an additional financial burden on claimants because the users' fee will probably be passed on to them as an out-of-pocket expense, which does not require SSA authorization; and

Estimated Savings Range for the period FY 1997-2000 :

Original REGO II proposal: $ 80 million and 1600 to 1800 WYs

Alternative: $ 46-60 million and 1100-1500 WYs

Alternative with users' fee option: $ 80 million + 900 WYs

- The savings estimates represent the maximum possible savings for this alternative and do not include all types and levels of fees requested or approved.

Savings Assumptions:

- SSA would no longer review fee agreements or issue checks to the attorneys;

- SSA will not be involved in fee violations unlessn the claimant notifies the Agency that a representative has charged more than the statutory cap or authorized fee petition amount;

- SSA estimated Based on FY 1994 data that showed 27 percent of fees paid were for more than $3250, that representatives could petition for a fee in 17 to 37 percent of all cases with representation;

- Full implementation will occur in FY 1997. However, a fully automated debt collection system will not be available in FY 1997. We expect that a costly, labor intensive manual processing of this workload will continue for at least 2 years, and possibly up to 4 years.

Under users' fee option:

- SSA would assess a users' fee for each case in which representatives choose the fee petition process (for cases with multiple representation, the users' fee would be divided by the number of representatives who petition for a fee). In addition, the users' fee requires additional FTEs to process the debt management/collection functions associated with this workload; and

BRIEFING PACKAGE

OCTOBER 20, 1995

WHITE HOUSE FOLLOW-UP BRIEFING ON ALTERNATIVES TO REGO II PROPOSAL TO ELIMINATE REPRESENTATIVES' FEE PROGRAM

TAB A: ANALYSIS & SAVINGS/COST ASSUMPTIONS FOR WHITE HOUSE STAFF ALTERNATIVES

TAB B: EXPANDED WORK FLOW CHART ON REPRESENTATIVE'S FEE PROCESS

TAB A

WHITE HOUSE STAFF ALTERNATIVE NO. 1

Description:

Under Alternative 1, SSA would:

- Eliminate attorney fee withholding;
- Replace percentage-based fee calculations with a cap;
- Require representatives who charge a fee equal to or less than the cap to negotiate and collect such a fee without SSA involvement;
- Retain the fee petition process in its current form for those representatives who do not negotiate a fee--equal to or less than the cap--with their client; and
- Suspend or disqualify representatives only when claimants notify SSA that they have been charged in excess of the statutory cap, or the authorized fee petition amount.

Discussion:

This alternative attempts to address concerns about the availability of representation for claimants with difficult cases by retaining the current fee petition process. Through the fee petition process, representatives are allowed to request a fee that is commensurate with their services; such a fee could be higher than the cap. However, in choosing the fee petition process, a representative risks receiving a fee that is lower than the cap.

SSA was asked to develop cost estimates for this alternative using three different fee caps. The caps were to be set in such a way that SSA could predict the possible behavior of attorneys, and thereby estimate the number of fee petitions that would be received and the associated savings at each capped level. In addition, one cap was to be set at a level that would minimize the number of fee petitions received. In response, SSA set the caps at $2500, $3250, and $4000 (A discussion of how these amounts were selected is under each option).

SSA does not have comprehensive and discrete data on all types and levels of fees requested or approved. Therefore, in order to reasonably predict the behavior of attorneys under this alternative, we decided to use three different sets of assumptions for each cap, and developed savings estimates for each assumption. For each set, the first assumption was based on available data for the number and amount of fees paid to attorney representatives in 1994. For the other two assumptions, we assumed a 10 percent increase and decrease in the first assumption. Based on 1994 fee requests, we believed it was reasonable to assume that there could be a 10 percent fluctuation in fee petitions under the following situations:

- An increase in the number of fee petitions might occur, if representatives:
  - -- Believed that the fee petition process would yield a higher authorized fee;
  - -- Could wait for authorization of their fee petition; and
  - -- Were not concerned that their clients would spend any past-due benefits before paying them; or

- A decrease in the number of fee petitions might occur, if representatives:
  - -- Believed that they could get their fees quicker without petitioning; and
  - -- Wanted to reduce the risk of not getting paid at all, particularly when claimants would have their past-due benefits to spend pending a fee petition authorization.

Savings Assumptions:

- The savings estimates represent the maximum possible savings for this alternative and do not include known categories of fee petitions and agreements since SSA does not have complete data on all types and levels of fees requested or approved. For instance, we do not collect data on cases where no past-due benefits exist, some cases involving administrative review, SSI cases where fees are not withheld or directly paid to the representatives.

- SSA would no longer issue checks to the attorneys, or review fee agreements;

- SSA will not be involved in individual fee disputes for any reason unless the claimant notifies SSA that their representative has charged more than the statutory cap or authorized fee petition amount;

- Full implementation will occur in FY 1997.

Table 6--Number of primary beneficiaries with an attorney fee, by type of benefit and amount, 1994

	Amount of fee		Total	Disabled Workers 1/	Other	
	Total		142362	138207	4155	
13,316	$499 OR less	9.4 %	13316	12637	679	9.4
29,489	$500-999	20.7 %	16173	15522	651	11.4
47,143	$1000-1499	33.1 %	17654	17079	575	12.4
63,197	$1500-1999	44.4 %	16054	15538	516	11.3
77,424	$2000-2499	54.4 %	14227	13789	438	10.0
89,751	$2500-2999	63.0 %	12327	11983	344	8.7
100,349	$3000-3499	70.5 %	10598	10336	262	7.4
108,663	$3500-3999	76.3 %	8314	8154	160	5.8
137,104	$4000	96.3 %	28441	28044	397	20.0
138,187	$4001-4499	97.1 %	1083	1055	28	.8
139,148	$4500-4999	97.7 %	961	935	26	.7
141,188	$5000-5499	99.2 %	2040	2007	33	1.4
141,373	$5500-5999	99.3 %	185	180	5	.1
142,362	$6000 OR more	100.0 %	989	948	41	.7

1/ Includes 935 disabled spouses and children of disabled workers, who were primary beneficiaries

WHITE HOUSE STAFF ALTERNATIVE NO. 2

Description:

Alternative 2 would retain all aspects of the current representative fee process and relieve SSA of the administrative costs associated with this process by assessing a users' fee--under one of two options. This users' fee would cover these administrative costs as well as the costs associated with debt management/ collection activities associated with a users' fee process.

While this alternative relieves SSA of the administrative costs associated with the current process, it does not reduce the amount of FTEs required to process the current representative fee workload. Furthermore, additional FTEs would be required to handle the debt/management collection of the users' fee at a time when SSA must reduce the number of FTEs involved in the current process in order to meet other budgetary commitments. In addition, this is not a process that lends itself to contracting out because of the linkage to SSA's adjudicative processes.

The two options for this alternative are:

- **Option 1**--The users' fee would be assessed only to attorney representatives; and

- **Option 2**--One of two different users' fee would be assessed to representatives depending on whether or not the representative was an attorney.

Savings Assumptions:

- The savings estimates do not include known categories of fee petitions and agreements, since SSA does not have complete data on all types and levels of fees requested or approved. For instance, we do not collect data on cases where no past-due benefits exist, some cases involving administrative review, SSI cases where fees are not withheld or directly paid to the representatives.

- In addition, these savings estimates do not include the costs associated with determining the users' fee in multiple representative situations or subsequent awards.

- SSA would continue all aspects of the current process;

- SSA would assess a users' fee on a per case basis, (i.e. for cases with multiple representation, the users' fee would be divided by the number of representatives who owe a fee);

- The users' fee would be increased through regulations as necessary to cover increases in the costs of this process due to inflation or discovery of additional costs not originally included in the estimate.

- Full implementation will occur in FY 1997. However, a fully automated debt collection system will not be available in FY 1997. We expect manual processing of this workload for at least 2 years, and possibly up to 4 years.

OPTION 1

Discussion:

The current fee authorization process is lengthy for both attorney and non-attorney representatives. However only attorney representatives receive direct payment of authorized fees. Thus, only attorneys directly benefit from the retention of the current lengthy process. In addition, most of the costs associated with the current process are related to this attorney payment process. Therefore, we developed a users' fee that would be assessed to attorney representatives only, and would cover the costs associated with maintaining the current process for attorney and non-attorney representatives.

We understand that the fee petition process is more costly than the fee agreement process and attempted to develop separate users' fees depending on which process the attorney selected. However, because the administrative review process is available for attorneys who wish to collect more than the amount derived from the fee agreement process, it is possible that attorneys could bypass the fee petition process in order to be assessed a lower users' fee at a substantial cost to SSA. Therefore, this option includes one users' fee that represents the cost for both of these processes.

Although we have no way of predicting how a users' fee will affect claimants' behavior, it is possible that claimants could seek non-attorney representation in order to avoid the users' fee which we believe attorneys will undoubtedly pass along to the claimant in the form of an out-of-pocket expense, which is excluded from SSA's authorization. For claimants who choose attorney representation, the users' fee under this option could be viewed as unfair because it:

- Shifts the administrative expense of a process from the government to the claimant, with the benefit going to the attorney and with no direct benefit to the claimant; and

- Requires claimants with attorney representation to bear the expense of administering this process for claimants with non-attorney representation.

OPTION 2

Discussion:

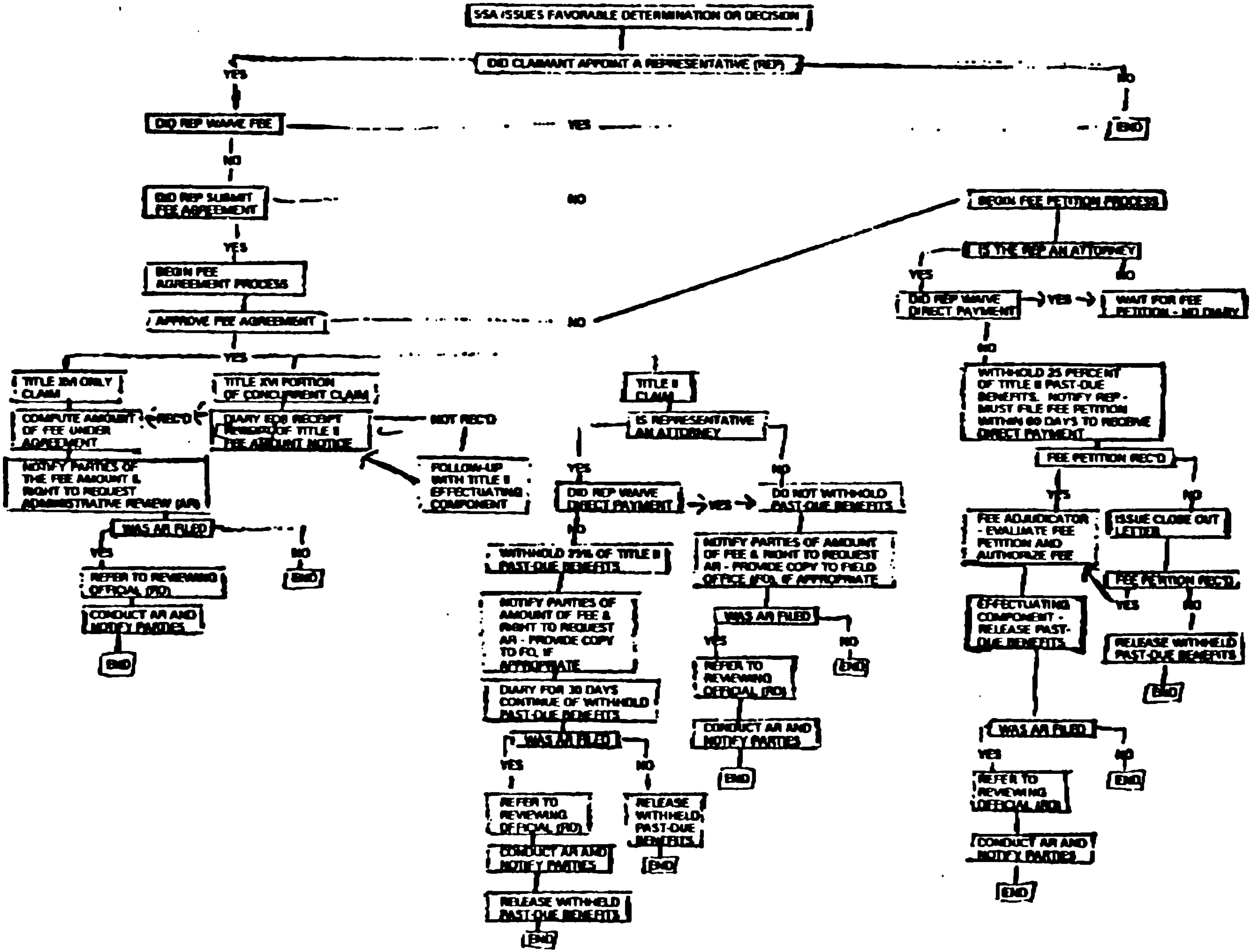
Although non-attorney representatives do not receive their fees directly from SSA, their collection of fees is simplified by SSA's calculation and notification of their client's past-due benefits, and by SSA's notification to claimants of their responsibility to pay their representative in the current process. Therefore, SSA and attorney representatives could argue that non-attorney representatives benefit from the current process even though they are not directly paid by SSA. Moreover, SSA claimants are protected against excessive fees by retaining non-attorney representatives in the current process, since SSA regulations bind non-attorney representatives in much the same way as States govern attorneys through codes of professional responsibility.

However, administrative costs associated with the current process are very different for attorney and non-attorney representatives, primarily because of the costs associated with payment of fees to attorneys. Therefore under this option, we have taken into consideration each of these issues and developed two users' fees which reflect the portion of the costs incurred for maintenance of the current process, and the users' fee debt management/collection process based on whether or not the representative is an attorney.

Since this users' fee will undoubtedly be passed on to the claimant, representatives will probably not oppose this option; especially attorney representatives who retain direct payment of their fees. However, this option would create an additional financial burden on the claimant because the users' fee will probably be passed on to the claimant as an out-of-pocket expense which does not require SSA authorization.

TAB B

WORKFLOW CHART -- REPRESENTATIVE'S FEE PROCESS



SAVINGS ESTIMATES FOR ALTERNATIVE 1

Cap: $2,500

- A cap of $2,500 was selected for the same reasons we used to support this amount in our current proposal forwarded to OMB.

- Since almost 46 percent of the fees paid in FY 1994 were for more than $2,500, we estimated that fee petitions for this proposal could represent between 36 and 56 percent of all cases with representation.

  <u>Estimated Savings Range</u>:

  $ 30-50 million for the period FY 1997-2000-------800-1200 WYs

Cap: $4,000

- A cap of $4,000 was selected since it is the amount of the cap contained in current law under the fee agreement process.

- About 4 percent of the fees paid in FY 1994 were for more than $4,000. Therefore, we estimated that fee petitions for this proposal could represent between 4 and 14 percent of all cases with representation.

  <u>Estimated Savings Range</u>:

  $ 60-70 million for the period FY 1997-2000-------1500-1700 WYs

Cap: $3,250

- A cap of $3,250 was selected since it is the amount between the $2,500 and $4,000 caps of the other two proposals.

- Almost 27 percent of the fees paid in FY 1994 were for more than $3,250. Therefore, we estimated that fee petitions for this proposal could represent between 17 and 37 percent of all cases with representation.

  <u>Estimated Savings Range</u>:

  $ 40-60 million for the period FY 1997-2000-------1100-1500 WYs

SAVINGS ESTIMATES FOR ALTERNATIVE 2

OPTION 1

(Users' fee for attorneys only)

<u>**Estimated Users' Fee:**</u>

$ 165/per case

OPTION 2

(Separate users' fee for attorney and non-attorney representatives)

<u>**Estimated Users' Fee:**</u>

$ 40/per case for non-attorney representatives

$ 160/per case for attorney representatives

$2350 att'y

Table 6--Number of primary beneficiaries with an attorney fee, by type of benefit and amount, 1994

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137,104	$4000	96.3 %	28441	28044	397	20.0
138,187	$4001-4499	97.1 %	1083	1055	28	.8
139,148	$4500-4999	97.7 %	961	935	26	.7
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142,362	$6000 OR more	100.0 %	989	948	41	.7

1/ Includes 935 disabled spouses and children of disabled workers, who were primary beneficiaries

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

26-Oct-1995 09:50am

Reents
Mon 11/1, 1:30 ?

TO: (See Below)

FROM: Molly Brostrom
Domestic Policy Council

SUBJECT: SSA Attorney's fees

As I've discussed with some of you, we think the next step in the SSA Attorney's fees process should be a meeting with our respective bosses and/or others interested in this proposal for further vetting/discussion of our alternative proposal (the "ellen" proposal).

Carol thinks such a meeting is a good idea; her schedule allows for a meeting Tues., Oct. 31, anytime between 2:30-5:00, or Thurs, Nov. 2, between 11-12. Please let me know if any of those times work for your offices.

The meeting will include:

Carol Rasco
Ken Apfel
Sally Katzen
Elaine Kamarck
NEC
Counsel's office
Pol. Apptee from SSA (Brian Coyne/Judy Chesser/Commissioner Chater if she's interested)

Let me know if you have additions/subtractions to suggest. Richard has agreed to give a summary of the new and old proposal (with help from us as needed).

thanks

Distribution:

TO: Ellen S. Seidman
TO: Laura A. Oliven
TO: Richard E. Green
TO: Jeffrey J. Connaughton

CC: Diana M. Fortuna
CC: Deborah F. Kramer

'06/14/95 11:09 ☎ 002

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TDD (605) 334-4832

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
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE

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15 LEE STREET
828 U.S. COURTHOUSE
MONTGOMERY, AL 36104
(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

RECEIVED JUL 2 4 1995

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

CHAIRMAN, COMMITTEE ON COMMERCE

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

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CULPEPER, VA 22701-3342
(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

(202) 224-3254
TTY (202) 224-4633
COMMITTEES:
AGRICULTURE
APPROPRIATIONS
SMALL BUSINESS
LABOR AND HUMAN RESOURCES

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

210 WALNUT ST.
733 FEDERAL BLDG.
DES MOINES, IA 50309
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350 WEST 6TH ST.
318 FEDERAL BLDG.
DUBUQUE, IA 52001
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BOX 74884
CEDAR RAPIDS, IA 52407-4884
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314B FEDERAL BLDG.
DAVENPORT, IA 52801

320 6TH ST.
110 FEDERAL BLDG.
SIOUX CITY, IA 51101

Vice President Gore
June 21, 1995
Page 2

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

OFFICES:

1835 Assembly Street
Columbia, SC 29201
803-765-5731

103 Federal Building
Spartanburg, SC 29301
803-585-3702

126 Federal Building
Greenville, SC 29603
803-233-5366

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200 East Bay Street
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United States Senate

125 RUSSELL OFFICE BUILDING
WASHINGTON, DC 20510-4002
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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.

With kindest regards, I am

Sincerely,

Ernest F. Hollings

EFH/lsm

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.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

7/31/95

LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 2193

FILE NO: 1265

Total Page(s): 11

TO: Legislative Liaison Officer - See Distribution below:

FROM: Janet FORSGREN (for) Janet Forsgren
Assistant Director for Legislative Reference

OMB CONTACT: Melissa COOK 395-3924
Legislative Assistant's line (for simple responses): 395-7362

SUBJECT: Social Security Administration Proposed Draft Bill: Eliminate Representative Fee Authorization Process and Direct Payment of Fees to Attorneys

DEADLINE: C.O.B. Wednesday, August 09,1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached is one of SSA's REGO II items. Please note that SSA is not sure exactly how this proposal will be tranmitted to the Hill. Therefore, it does not have a formal Speaker letter or section-by-section.

DISTRIBUTION LIST:

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217-JUSTICE - Andrew Fois - (202) 514-2141

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C. Konigsberg/L. Muniz
Jim Murr
Janet Forsgren
Holly Brostrom

RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 2193
FILE NO: 1265

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: Melissa COOK 395-3924
Office of Management and Budget
Fax Number: 395-6148
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: ______________________________ (Date)

______________________________ (Name)

______________________________ (Agency)

______________________________ (Telephone)

SUBJECT: Social Security Administration Proposed Draft Bill: Eliminate Representative Fee Authorization Process and Direct Payment of Fees to Attorneys

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

_____ FAX RETURN of ____ pages, attached to this response sheet

SOCIAL SECURITY ADMINISTRATION
REGO II LEGISLATIVE PROPOSAL

Representative Fees

<u>Eliminate Representative Fee Authorization Process and Direct Payment of Fees to Attorneys</u>

<u>Current Law</u>: The Commissioner of Social Security, using one of two processes, authorizes the fee that may be charged by an attorney or non-attorney to represent a claimant for Social Security, Supplemental Security Income (SSI), or Part B Black Lung benefits in administrative proceedings.

Under the fee petition process, the representative must request the Commissioner's authorization of fees, but there is no limit on the amount of the fee that may be authorized except that it must be "reasonable." Each fee petition requires an individual evaluation and determination by an Administrative Law Judge (ALJ) or other authorized personnel. Adjudicators, in authorizing a fee, consider factors such as the complexity of the case, the time spent in rendering services, the skills needed, and the results achieved.

Under the fee agreement process, if the representative and claimant have signed and submitted a written agreement as to the amount of the fee, the agreement usually will be approved by the Commissioner if the specified fee does not exceed the lesser of 25 percent of the claimant's past-due benefits or $4,000. The Commissioner then issues a notice of the maximum fee the representative can charge based on the approved agreement.

Social Security regulations provide that a representative may not charge or collect, directly or indirectly, a fee in any amount not authorized by the Social Security Administration (SSA) or a Federal court. The statute and regulations provide that SSA may suspend or disqualify from further practice before SSA a representative who breaks the rules governing representatives.

Under programs other than SSI, in favorable decisions in which the claimant is represented by an attorney, the Commissioner must withhold and pay to the attorney, out of the claimant's past-due benefits, the smaller of: (1) 25 percent of past-due benefits, or (2) the fee authorized by the Commissioner under either the fee petition or fee agreement process. This payment provision does not apply to SSI, because the

Congress decided it would not be appropriate under a means-tested program to reduce a claimant's benefits in order to pay an attorney.

In addition, whenever a court renders a favorable decision under any of the programs (except SSI), the court may allow an attorney a reasonable fee, but not more than 25 percent of past-due benefits, for his or her service before the court, and the Commissioner may pay the authorized fee to the attorney from the 25 percent withheld from past-due benefits.

Proposal: Eliminate--

- o the fee petition process by which the Commissioner authorizes the amount of the fee that may be charged by a claimant's representative to represent the claimant in administrative proceedings;

- o the fee agreement process by which the Commissioner approves or disapproves the written agreement that the claimant and representative have previously filed, notifies the claimant and representative of the amount of the fee payable under a fee agreement, and reviews the fee upon request of any of the parties involved;

- o the requirement that the Commissioner withhold 25 percent of the claimant's past-due Social Security or black lung benefits for direct payment to an attorney who represents a claimant in an administrative or judicial proceeding; and

- o the statutory limitation of 25 percent of past-due benefits on the amount a federal court can award.

Impose a statutory limit on the total amount of the fee a representative or representatives may receive for all services provided in representing a claimant in administrative proceedings involving Social Security, SSI, and/or Part B Black Lung benefit programs. The statutory limit shall be $ 2,500 (to be adjusted periodically by the Commissioner).

Allow a court rendering a judgement in the case of a represented claimant to determine a reasonable fee for such judicial representation and, if a court determines such a fee, require the attorney to inform the court whether he or she will charge a fee for representation at the administrative level, or if the claimant had other representatives at the administrative level.

Claimants and their representatives would continue to receive written notification of decisions and the statutory limit on fees for administrative proceedings. Enforcement would occur as a result of a complaint that the representative has charged a fee in excess of the statutory limit. Under statutory provisions already in force, SSA could suspend or disqualify a representative from representing Social Security claimants before the Agency.

Rationale: The proposal would reinforce claimants' rights to contract for Social Security representation as they do for other legal services without SSA involvement. By limiting its involvement to enforcement activities, SSA would also realize savings in administrative costs and free up additional staff to handle priority workloads, such as initial disability claims.

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 disability benefits. Thus, the overall amount of program funds available to representatives would be slightly higher than under the current process. (In 1994, 54 percent of the fees paid were for less than $2,500.) In addition, SSA could release past-due benefits previously withheld to beneficiaries sooner. In turn, as beneficiaries receive all benefits due them sooner, they could pay their representatives sooner.

Opposition to this proposal could be expected on the grounds that some attorneys might not be willing to take on Social Security cases if they are no longer assured of direct payment by SSA. Nonetheless, in FY 1994, 64 percent of the SSI claimants at the hearing level were represented--72 percent of these claimants were represented by attorneys, 28 percent by non-attorneys--without benefit of direct payment of fees. Representative opposition may also be expected to imposing a statutory cap on administrative-level fees, that is less than the current $4,000 cap. This is particularly true for claims in which adjudication takes a long time and could yield higher representatives' fees under the current fee agreement and fee petition processes. (In 1994, almost 46 percent of the fees paid from claimants' past-due Social Security disability benefits were for more than $2,500.)

Effect on Beneficiaries: Under this proposal, claimants could continue to hire private attorney or non-attorney representatives directly and to engage legal aid services and representatives whose fees are paid by third parties (e.g., insurance companies), a growing source of representation before SSA. In addition, with a statutory cap at the administrative level claimants would be aware of the maximum amount representatives could charge for services rendered at such level prior to contracting their services, and would pay less representative fees on average than under the current process when the decision on their claim is delayed. In addition, representatives would have less incentives to delay claims in order to get higher fees from past-due benefits.

Moreover, ALJs would no longer have to review fee agreements or authorize fees and could devote more time to hearing and deciding cases. (In 1994, about 30 percent of the fee requests at the hearing level were submitted under the fee petition process.) Under this proposal, past-due benefits previously withheld by SSA--to allow time for fee petition/agreement processing--would be paid to claimants with all other past-due benefits, and thus would be available about 45 days sooner to pay attorney fees.

Federalism Impact: None.

Cost: (millions)

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
Program[1/]	$3	$33	[illegible]	$3	$3
Administrative	$0	-$20	-$20	-$20	-$20
Long-range cost/savings		To be determined			

1/ Although the total amount of OASDI benefit payments would not change, the proposal would result in an "acceleration" of payments. This results in an increase in OASDI benefit payments on a cash-flow basis, most notable in the second year of operation.

Effective Date: Effective for initial claims and appeals--with first-time representation--filed 60 days after enactment.

Contact Person: Judy L. Chesser, (202) 482-7148

ID:202-395-6148 AUG 02,95 21:46 No.007 P.06

Representative Fees.

Under current law, the Commissioner of Social Security, using one of two processes, authorizes the fee that may be charged by an attorney or non-attorney to represent a claimant for social security, supplemental security income (SSI), or part B black lung benefits in administrative proceedings.

Under the fee petition process, the representative must request the Commissioner's authorization of fees; there is no limit on the fee that may be authorized except that it be "reasonable." Each fee petition is evaluated by an adjudicator who, in authorizing a fee, considers factors such as the complexity of the case, the time spent in rendering services, the skills needed, and the results achieved.

Under the fee agreement process, a written agreement between the claimant and representative as to the amount of the fee is submitted to the Commissioner for approval. Approval is usually forthcoming so long as the agreed-upon fee does not exceed the lesser of 25% of the claimant's past-due benefits or $4,000.

In favorable decisions under the social security and part B black lung programs in which the claimant is represented by an attorney, the Commissioner must withhold and pay to the attorney, out of the claimant's past-due benefits, the smaller of 25% of past-due benefits or the fee authorized by the Commissioner.

In addition, whenever a court renders a favorable decision under one of those two programs, the court may allow an attorney a reasonable fee (not exceeding 25% of past-due benefits) for service before the court, and the Commissioner pays the authorized fee to the attorney from the past-due benefits otherwise due the claimant.

A representative may not charge or collect a fee that exceeds the amount allowed by the Commissioner or a court. The Commissioner may suspend or disqualify from further practice before the agency any representative who breaks the rules.

Section ___ would carry out a Phase II initiative of the Vice President's National Performance Review by eliminating the Commissioner's role in authorizing a representative's fee and, in the case of the social security and black lung programs, paying the fee from the claimant's past-due benefits. It would also eliminate the statutory limit of 25 percent of past-due benefits on the amount of fees that a court may award.

In the future, claimants would be free to contract for representation with respect to social security, SSI, and part B black lung claims, subject to a $2500 ceiling on fees (which may be subsequently increased by the Commissioner). A court would be authorized to set a reasonable fee for judicial representation; in making such a determination, the court would be required to consider the amount of the fee, if any, charged for representation in connection with the claimant's claim at the administrative level.

Claimants and their representatives would continue to receive written notification of decisions and fee limits. Any representative who fails to honor the new fee limits could be disqualified from practice before the Commissioner, and subject to criminal penalties.

In making these changes, section ___ would accomplish two benefits. First, by restoring to the Social Security Administration's clientele the prerogative to negotiate and pay for representational services relating to social security claims, it would dignify them with their government's faith in their judgment and capability to manage their own affairs. Second, by limiting the agency's involvement to enforcement activities, it would realize savings in administrative costs and release staff to address priority workloads.

The new $2,500 fee cap is somewhat higher than the current average of approved fees. Specifically, in 1994, 54 percent of the fees paid by the Commissioner amounted to less than $2,500. Were the current process allowed to continue, the incidence of fees higher than the current average would be expected to diminish once the agency's redesigned disability claims process is in operation since, by producing quicker decisions, it will reduce the amount of retroactive benefits payable and hence the amount of the representative's fee.

SEC. . REPRESENTATIVE FEES.

(a) Administrative Proceedings.--Section 206(a) of the Social Security Act is amended--

(1) by striking--

(A) the fourth and fifth sentences of paragraph (1);

(B) paragraph (2);

(C) paragraph (3); and

(D) paragraph (4);

(2) by inserting after paragraph (1) the following:

"(2)(A) No person, agent, or attorney may charge in excess of $2500 (or, if higher, the amount set pursuant to subparagraph (B)) for services performed in connection with any claim before the Commissioner under this title, or for services performed in connection with concurrent claims before the Commissioner under this title and title XVI.

"(B) The Commissioner may increase the dollar amount under subparagraph (A) whenever the Commissioner determines that such an increase is warranted. The Commissioner shall publish any such increased amount in the Federal Register.

"(C) Any agreement in violation of this paragraph shall be void.

"(3) Whenever the Commissioner makes a determination in connection with any claim for benefits under this title by a claimant who is represented by a person, agent, or attorney, the Commissioner shall provide the claimant and such person, agent, or attorney a written notice of--

"(A) the determination;

"(B) the dollar amount of any benefits payable to the claimant; and

"(C) the maximum amount under paragraph (2) that may be charged for services performed in connection with such claim."; and

(3) by redesignating paragraph (5) as paragraph (4).

(b) Judicial Proceedings.--Section 206(b)(1) of such Act is amended--

(1) in the first sentence of subparagraph (A), by striking "representation," and all that follows and inserting "representation. In determining a reasonable fee, the court shall take into consideration the amount of the fee, if any, that such attorney, or any other person, agent, or attorney, may charge the claimant for services performed in connection with the claimant's claim when it was pending before the Commissioner.";

(2) in the second sentence of subparagraph (A), by striking "or certified for payment";

(3) by striking subparagraph (B); and

(4) by striking "(b)(1)(A)" and inserting "(b)(1)".

(c) Conforming Amendments.--

(1) Section 223(h)(3) of such Act is amended by striking everything that follows "obtained)" and inserting a period.

(2) Section 1127(a) of such Act is amended by striking

the last sentence.

(3) Section 1631(d)(2)(A) of such Act is amended--

(A) by striking "(other than paragraph (4) thereof)"; and

(B) by striking everything following "title II" and inserting a period.

(d) Effective Date.--The amendments made by this section shall be effective with respect to--

(1) any claim for benefits under the social security program authorized by title II of the Social Security Act, the supplemental security income program authorized by title XVI of such Act, or the black lung program authorized by part B of the Black Lung Benefits Act that is initially filed on or after the sixtieth day following the date of the enactment of this Act; and

(2) any claim for such benefits filed before such day by a claimant who is not represented by any person, agent, or attorney in connection with such claim before such day.

10/5/95

1st
State DDS
ALJ
ALJ Higher court - Bd of Appeals
Dist Ct

1. written notice to indiv.
2. calc
3. w/hold
4. check
5. fee authoriz.? OHA?

---

① 4,000 or 25% - lesser
② SSI too; DI direct pymt to attys
③ Lawyer can petition for more - to ALJ
170,000 fee auth TOTAL
120,000 fee agreement
50,000 fee petition

SSA: break out costs

Bazelon - contingent fee arrangement

10/6/95

Toni: Some att'ys drag out to increase $
Admin budget desperate; won't lose attys, tho caliber ↓
Atty: $320m/yr. - DI

WINSTON & STRAWN

SEP 11 1995

35 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601-9703

43, RUE DU RHONE
1204 GENEVA, SWITZERLAND

6, RUE DU CIRQUE
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(202) 371-5700

FACSIMILE (202) 371-5950

175 WATER STREET
NEW YORK, NY 10038-4981

SULAYMANIYAH CENTER
RIYADH 11495, SAUDI ARABIA

SSI-CSC-fee
1/3 concurrent SSI/SSDI

DATE: September 08, 1995

PLEASE DELIVER THE FOLLOWING PAGE(S)

TO: Carol Rasco
FIRM: The White House
FAX#: 94567028

FROM: Beryl F. Anthony
PHONE: 202-371-5754

former congressman from Arkansas.

CS Daniel
atty Fee

TOTAL # OF PAGES (INCLUDING COVER SHEET): 2

SUBJECT:
COMMENTS:
Attention: Pam

* Understand anti-asst provision

Re: Scheduling
Per your instructions, attached is a letter requesting an appointment with Carol Rasco.
89 - signif savings there
Please call Sara Franko 371-5837 if you have any trouble receiving this fax.

*Nada back from Elaine - Sen Gore
Propor - 1 not'f fee agreement $94k
* SSA won't share Route to svgs; orig $4,500 → 2,500
CSC can't rep.
w comp fee ~~to~~ computed % + direct pymt

Not opposed to user fee

If you do not receive all the pages, please call our facsimile operator at (202) 371-5881 as soon as possible. Thank you.

Direct Dial Fax Number: (202) 371-5950

SEP 11 199?

WINSTON & STRAWN

FREDERICK H. WINSTON (1853-1886)
SILAS H. STRAWN (1891-1946)

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WASHINGTON, D.C. 20005-3502

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THE INTERNATIONAL LAW FIRM
SULAYMANIYAH CENTER
TAHLIA STREET
RIYADH 11496, SAUDI ARABIA
(9661) 4629666

WRITER'S DIRECT DIAL NUMBER

(202) 371-5754

September 8, 1995

Via Facsimile

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

Re: Appointment Request for the Week of September 11, 1995

Dear Ms. Rasco: Carol

I am writing to request an appointment with you regarding a Reinventing Government II ("REGO II") initiative affecting the Social Security Disability program. My client, the National Organization of Social Security Claimants' Representatives, is concerned about the Social Security Administration's (SSA) proposal under REGO II to eliminate the representative fees program. We strongly believe that the proposal will impede the ability of disabled citizens to obtain competent representation before the SSA. I understand that you recently corresponded with Arkansas State Senator Gordon regarding this topic. I would appreciate the opportunity to address your comments and concerns regarding the existing program and to provide you with an alternative. Contact

Since this issue is likely to face congressional consideration within the next few weeks, I am hopeful that your schedule will permit a meeting early in the week of September 11th. If you have any questions regarding this request, please feel free to contact Sara Franko at 371-5837, or my assistant, Claudia Balint, at 371-5812. Thank you for your consideration. ?

Sincerely,

Beryl

Beryl F. Anthony, Jr.

Burl

##################### FACSIMILE SHEET #####################

Diane — per my e-mail — Molly

SOCIAL SECURITY ADMINISTRATION
Office of the Commissioner
1825 Connecticut Avenue, 7th Floor, NW
Washington, DC 20009
Telephone Number: 202-482-7100
Fax Number: 202-482-7105

Date: ______ Pages: 9

From: Brian Coyne To: Molly Brostrom

Location/Organization: ______ Location/Organization: ______

Telephone Number: ______ Telephone Number: ______

Fax Number: ______ Fax Number: 456-7028

Messages:

Rubenstein Letter / Sorry for the delay.

Brian Coyne

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.

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- 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.

By Mr. PRYOR (for himself, Mr. DECONCINI, Mr. RIEGLE, Mr. MATSUNAGA, Mr. BUMPERS, Mr. HARKIN, Mr. HEFLIN, Mr. SIMON, Mr. GLENN, Mr. NUNN, and Mr. FOWLER):

S. 1570. A bill to amend the Social Security Act to partially deregulate the collection of fees for the representation of a claimant in administrative proceedings; to the Committee on Finance; and

By Mr. PRYOR (for himself, Mr. RIEGLE, Mr. MATSUNAGA, Mr. BUMPERS, Mr. GLENN, Mr. DECONCINI, Mr. HOLLINGS, and Mr. GORE):

S. 1571. A bill to amend the Social Security Act to establish in the Social Security Administration the Office of Chief Administrative Law Judge, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY LEGISLATION

● Mr. PRYOR. Mr. President, today I am introducing with a number of my colleagues a package of two bills which are designed to improve the management of the hearings and appeals process at the Social Security Administration [SSA]. These bills will protect the rights of claimants for Social Security benefits and ensure that their cases are strongly represented at fair, impartial, and speedy hearings.

The first bill streamlines the process for awarding fees to attorneys in Social Security cases. The second ensures the independence of Administrative Law Judges [ALJ's] at SSA so that they remain free to make decisions on Social Security cases without political interference.

Both bills should be budget neutral and I hope they can be considered by the Finance Committee as it considers the 1989 budget reconciliation bill. The bill on attorney fees, in fact, may even save administrative funds for the Federal Government.

I would like to speak on each bill in turn.

ATTORNEY FEE REFORM

Mr. President, this bill is designed as a consensus approach to resolving an issue which has been engulfed by controversy over the past few years. In fact, after a somewhat heated dispute between attorneys and SSA in 1987, this bill represents a common ground with important improvements for all parties involved. Most importantly, this bill contains provisions to ensure Social Security claimants will be able to secure representation by attorneys in hearings before SSA, which is fundamental to a full and fair hearing.

From the standpoint of a disabled worker, severe mental or physical conditions can make a complex adjudicative process especially intimidating and confusing. Not surprisingly, disability claimants are increasingly turning to attorneys for assistance. Currently, about two-thirds of claimants appealing decisions to an ALJ are represented by attorneys.

Underlying the issue of attorney fees is the challenge of ensuring adequate safeguards against overcharges while providing fair compensation for services performed on behalf of the claimant. Disability attorneys and SSA agree that the current payment system is cumbersome, drawn out, and in need of reform. This bill is designed to balance safeguards against the need for fair compensation, while streamlining the process for awarding fees.

RECENT CONTROVERSY ON FEES

ALJ's have responsibility under current law for reviewing fees charged by attorneys in cases argued before them. On April 1, 1987, a new SSA policy temporarily denied ALJ's the authority to approve fee requests above $1,500. Previously, an ALJ could approve fees up to $3,000. The basis for this action, according to SSA, was a report of the Inspector General [IG] which concluded that attorney fees were sometimes excessive and should be lowered to a set rate.

Following the start of the new policy, many DI attorneys protested that the new policy would deny them adequate compensation, and that payments would be further delayed and complicated as a result of an additional layer of bureaucracy. I joined them in arguing that disability claimants would be the ultimate losers because fewer and fewer attorneys would be willing to represent them.

Opposition to the new SSA policy rapidly intensified. I worked with others to find a legislative solution. The result was enactment of a provision in the Omnibus Budget Reconciliation Act of 1987 [OBRA] to rescind the new SSA directive and impose a moratorium until July 1989 on changes to the original payment policy pending the completion and consideration of studies by SSA and GAO. The moratorium is now over, Mr. President, and I believe Congress should evaluate these studies and establish a new framework for processing attorney fees.

STUDIES BY SSA AND GAO

The GAO report completed pursuant to OBRA 1987 found that generally fees for attorneys were not unreasonable. According to the report, 93 percent of the fee requests up to $3,000 were approved, as was 94 percent of the total amount requested. In most cases, only fee requests exceeding $3,000 were significantly reduced.

However, GAO found that the approval process on average took about 7 months and recommended to SSA a proposal to streamline the process, which SSA has yet to implement. Despite these delays, GAO found that claimants did not have difficulty finding an attorney to represent them. The GAO findings on access, however, are of limited utility since they do not look at different categories of cases where concerns have been raised about the lack of private representation, such as cases in which little or no back award can be expected from which to draw fees. Moreover, GAO's conclusion on access is based on a flawed IG study in which only claimants were interviewed, ignoring the potentially large population who did not appeal because of difficulty in securing representation.

SSA later completed a study, as required by OBRA 1987, which recommended near-total deregulation of the attorney fee process, with a two-party check to the attorney and claimant in each case, which would allow them to work out any arrangement they chose. SSA further proposed that fee disputes be given special scrutiny and that special rules of conduct for representatives appearing before SSA be delineated, in order to ensure that claimants were protected in the process of deregulation.

Mr. President, I believe the SSA study is a useful contribution to the debate over this issue, and I have striven to be faithful to its recommendations in crafting the bill I am introducing today. Their proposal recognizes the need to "relieve both the agency and attorneys of a growing administrative burden." I think my bill accomplishes this purpose, and is in keeping with the broad framework of the SSA proposal.

I believe, however, that the SSA proposal goes too far in the direction of deregulation, and does not fully balance the needs to protect claimants against the need for a fair and efficient fee process. I do not believe my colleagues in the Congress are prepared, nor am I, to go as far as SSA proposes. Yet I hope we are willing to travel down the same path.

My bill accomplishes the deregulation SSA envisages, but it sets boundaries as to fees that can be presumed to be reasonable and requires SSA to evaluate each fee that falls outside those boundaries. I would expect that 95 percent of all fees could be automatically approved under my proposal, eliminating a huge and unnecessary workload for attorneys and SSA. Indeed, SSA's report estimates expenditures of $6.9 million for fiscal year 1988 for processing attorney fees, or over 200 direct workyears. I hope much of this amount can be saved, and the work force redirected to addressing growing backlogs of cases which GAO recently identified as a major problem. A brief description of current law and my proposal follows.

CURRENT LAW ON FEES

Attorneys representing Social Security claimants may petition for a fee of up to 25 percent of the past-due benefits which a claimant is awarded, given a favorable decision. Under current procedures, the attorney must submit a detailed petition for this amount; the Administrative Law Judge [ALJ] deciding the case reviews the petition, and, if the amount is under $3,000 may award the fee at that point, or adjust it. If the fee is over $3,000, the petition must be sent to the regional ALJ office for review.

In cases where the beneficiary's back award is subject to offset for repayment of SSI benefits or State assistance, SSA's current policy is to apply the offset before paying the attorney fee. In practice, this results in many cases where there are no funds left to pay the attorney. Similarly, in cases where no back benefits accrue because interim benefits were paid, or where no benefits accrue per se, such as rep payee disputes, Medicare eligibility, or disputes about overpayments, funds are often unavailable for appropriate fees.

SUMMARY OF ATTORNEY FEE PROPOSAL

Under the bill we are introducing today, the fee petition process is eliminated in most cases, and replaced with an automatic fee approval procedure. ALJ's and attorney's fee processing workload is thereby vastly reduced. Although no CBO estimates are yet available, savings are possible. The current law requirement that the Secretary determine a reasonable fee in each case is replaced by a rebuttable presumption that any contractual agreement entered into between an attorney or other representative and a client is approved automatically by SSA. Exceptions are that SSA will review agreements that either:

First, exceed 25 percent of past due benefits;

Second, apply to cases with fees exceeding $4,000; or

Third, are protested in a complaint about the fee by the claimant, representative, the ALJ or other decisionmaker.

In these exceptional cases, attorneys will be required to submit a fee petition, and SSA ensures that fees are reasonable.

To ensure that all claimants can retain representation, the proposal provides for appropriate fees in cases where there is no back award. There is no back award, for example, in cases with continuing entitlement to interim benefits where payments have continued through the appeal process. The automatic fee approval process applies to agreements not exceeding 25 percent of the total of benefits paid through the period of appeal, known as interim benefits.

Where no benefits accrue per se, such as representative payee disputes, we must also ensure appropriate fees to guarantee adequate representation for petitioners. My bill applies the automatic payment system to fees in those cases which do not exceed three times the basic monthly benefit amount [PIA], or, if less, three times the monthly benefit amount. Further, attorney fees will be calculated and paid without applying offsets to the back award to ensure that funds are left over to pay attorneys so that they will take these cases.

PROBLEMS WITH SSA TWO-PARTY CHECK PROPOSAL

My bill retains the current law requirement that SSA issue separate checks for the claimant and for the attorney. Each party can negotiate his or her check without delay. Having issued two checks, SSA's fiduciary responsibilities are concluded.

By contrast, SSA has proposed that the current system be replaced by a single two-party check. Such a policy invites delay in at least two ways. First, the parties must each endorse the check, so that if one party is out of town or cannot be located, the other party cannot receive the payment which he or she is due. A second factor is the time needed for the two-party check to clear in the attorney's escrow account, so that two checks may be drawn by the attorney on that account.

Furthermore, a single two-party check process invites possible misappropriation of funds, giving an unscrupulous attorneys an opportunity to exploit their clients, many of whom are mentally impaired. It also necessitates an on-going supervisory role for the agency to see that funds have been correctly disbursed, and to intervene if problems arise. Such supervision would require a new bureaucracy to review affidavits from attorneys and from claimants concerning the allocation of funds. In the final analysis, it is simply proper that funds to which beneficiaries are entitled be sent directly to them, and that no intermediary be placed between them and their money.

INDEPENDENCE OF ALJ'S

Mr. President, I am also introducing a bill today to ensure the independence of the judicial appeals process within SSA, which has been a high priority of mine for many years. I believe we have witnessed an adjudicative nightmare over the last decade. This bill will ensure that this never happens again.

In the early 1980's, we witnessed an assault on thousand of truly disabled Americans who could not argue their case, and a threat by SSA on the independence of ALJ's who sought to correct such abuses. ALJ's were threatened at the very top with their positions and their careers.

The independence of the appeals process, in my opinion, is at the soul of the Social Security program. Attempts have been made in the past decade to subvert it, but my bill will fully protect the integrity of the process. No longer should ALJ's be subjected to political pressure by bureaucrats who try to save program dollars at the expense of eligible beneficiaries. ALJ's must be free to make independent review and decisions on cases.

FT. SMITH, ARKANSAS HEARING

Mr. President, in 1982, I held a hearing in Ft. Smith, AR, that I will never forget. I had a witness there who was a little lady that had been cut off and denied her benefits. She had been told by SSA that she could get a job as a secretary and as a typist. Well, she appeared before our hearing—we had 700 people there—and told us her gas, her water, her electricity had been cut off. She had no source of income. She was legally blind and had one arm, and they said, "you can be a secretary." This has happened thousands of times, and it has happened to people who did not know how to defend themselves. I hope we do not repeat it.

We saw in the early 1980's the rating by SSA bureaucrats of ALJ's, just like Senators are rated by the Chamber of Commerce or the AFL-CIO, the conservatives and liberals who rate us. As I learned from my good friend Judge David Hubbard from Ft. Smith and others, they rated those ALJ's all over the country with a sheet tallying, "How many times did you hold for the administration? How many times did you hold for the claimant?" And they tallied up all these percentages, and those ALJ's that held for the claimant too many times were literally called on the carpet. Although SSA would deny this, I believe the careers of these ALJ's were basically put in jeopardy. They were told to get in line and start keeping these people off the rolls.

CURRENT ALJ STRUCTURE

ALJ's at SSA are currently assigned to the Office of Hearings and Appeals [OHA]. These judges hear and decide cases arising within the jurisdiction of the Department of Health and Human Services, including Medicare and Social Security. The judges are theoretically organized under a chief ALJ. The position is not a creation of either statute or regulation, making it an ineffective office. The actual authority resides in the Associate Commissioner and the Deputy Commissioner to whom the Associate Commissioner reports.

NEED FOR REFORM

A series of congressional hearings in 1975, 1979, 1981, 1983, and 1988 on the appeals process at Social Security have documented that bureaucratic interference has sometimes threatened the due process rights of claimants. A problem with the current structure is that responsibility for the entire hearing process is placed upon individual ALJ's, but the managerial authority of for the program is in the hands of nonlegally trained bureaucrats who have sometimes been insensitive to the due process rights of claimants.

In May 1981, the Inspector General of HHS questioned the wisdom of having the judges employed by the same agency whose cases they decide. The report highlighted this appearance of conflict in which one arm of SSA makes basic eligibility determinations while OHA of the same agency adjudicates the claim. Moreover, a Federal District Court held that the SSA had an ulterior motive in the continuing disability review program to reduce the payment of claims by ALJ's and that judges could have reasonably felt pressured to issue fewer allowance decisions, in the case of Association of Administrative Law Judges versus Heckler, in 1984.

MEDICARE APPEALS

The Health Care Financing Administration [HCFA] has made attempts in recent years to remove Medicare cases from the jurisdiction of Social Security ALJ's, who currently adjudicate claims for Part A and Part B of Medicare. The plans they have proposed would significantly diminish the competence and independence of the ALJ's and unduly compromise the fairness of the hearing process.

Currently, ALJ's reverse the decisions of the Medicare program in nearly 70 percent of all appeals that reach a decision on the merits. With growing complaints about the quality of decisionmaking by Medicare fiscal intermediaries, more and more patients and providers are taking advantage of this opportunity for a fair review of Medicare claims.

HCFA has attempted to employ a new and inexperienced group of ALJ's whose primary responsibility would have been to handle Medicare appeals through telephone or field hearings at specified locations. This has been known as the "dial-a-judge" proposal. I worked with my colleagues to see that proposal defeated on the Senate floor. I do not want to see it attempted again.

The current network of SSA Offices of Hearings and Appeals across the country provides experienced judges within a reasonably close distance from claimants' residences. Face-to-face hearings are currently the rule, rather than the exception.

Historically, HCFA has responded to decisions favorable to beneficiaries in ALJ hearings with efforts to reduce or eliminate the impact of those decisions. For example, HCFA has engaged in a stepped up effort to have favorable ALJ decisions reopened and revised by the Appeals Council. Similarly, HCFA has attempted to develop instruction programs for ALJ's regarding Medicare coverage criteria.

There is no valid reason to create an entirely new corps of ALJ's to handle these cases. If ALJ's workload increases, it would be more efficient to absorb those appeals within the current system with increased staffing rather than to create a new and separate system. We must not allow HCFA to move in this direction until we have had opportunity to analyze its full ramifications. My bill therefore calls for a continuation of the current system until a study can be performed by HHS and GAO. Independence for ALJ's is crucial to fair decisions on Medicare appeals.

SUMMARY OF ALJ BILL

The bill is designed to promote decisional independence of ALJ's, and ensure proper management of the hearings and appeals process. This legislation proposes to replace the current arrangement of the OHA, administered by individuals accountable to political appointees, with the appointment of a Chief ALJ under a special nonpartisan process to administer hearings and appeals. The proposal is intended to complement an initiative to make SSA an independent agency, but it is also a freestanding approach which is necessary even outside the context of an independent agency.

MAJOR PROVISIONS

Under my bill, a chief ALJ will be appointed to administer the hearings and appeals process, reporting directly to the Commissioner of Social Security. The chief ALJ would be appointed by the Secretary pursuant to recommendations made by a special nominations commission established for that purpose. The commission is composed of the president of the American Bar Association, the Federal Bar Association, and the chairman of the Administrative Conference of the United States, or their respective designees. The commission selects three recommendations; if the Commissioner chooses not to appoint from that list, he or she can request a new list. The nominee must have been an ALJ for at least 3 years preceeding his appointment. The chief ALJ serves for a fixed term of 5 years and may be removed only pursuant to a finding by the Commissioner of neglect of duty or malfeasance in office.

In addition, ALJ's serving at SSA also preside over appeals in Medicare cases, as is current practice. By July 1, 1992, HHS and GAO are required to report to Congress on that arrangement.

Although my bill keeps the office under SSA, it is accorded greater independence and stature within the agency. It increases confidence in the appeals system by placing the process under the operational control of a chief ALJ. It further separates the hearing process from the agency function by placing the Office of the chief ALJ directly under the Secretary of HHS, who may delegate that authority to the Commissioner of Social Security.

CONCLUSION

Citizens seeking disability, old age and survivors benefits, supplemental security income and Medicare are entitled to fair, impartial hearings with administrative due process. This bill is designed to protect that right.

Mr. President, I urge all of my colleagues to join me as a cosponsor of these timely and important pieces of legislation. I also ask unanimous consent the full text of the two bills be printed at this point in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by striking the fourth sentence and all that follows through the end of the subsection and inserting in lieu thereof the following:

"(2)(A) Except as provided in paragraph (3) and subject to subparagraph (B)—

"(i) whenever the Secretary, in any claim before the Secretary for benefits under this title, makes a determination favorable to the claimant and the claimant was represented by—

"(I) an attorney, or

"(II) any other representative recognized by the Secretary under the rules and regulations prescribed pursuant to paragraph (1), such attorney or representative shall be entitled to recover a fee to compensate such attorney or representative for services performed in connection with such claim in an amount agreed upon between the claimant and such attorney or representative, which is specified in a written agreement filed with the Secretary, and

"(ii) with respect to the fees of an attorney, if as a result of a determination described in clause (i), a claimant is found to be entitled to past-due benefits under this title, the Secretary shall, notwithstanding section 205(i), certify for payment out of such past-due benefits to such attorney in an amount equal to the amount specified in such written agreement.

"(B)(i) Except as provided in clause (ii), the Secretary shall determine the reasonableness of the fee of the attorney or representative specified in the filed written agreement between the claimant and such attorney or representative. If the Secretary makes a finding of unreasonableness with respect to such fee, the Secretary shall, by regulation, prescribe a fee.

"(ii) The Secretary shall approve the fee specified in a written agreement if such fee does not exceed the lesser of—

"(I) $4,000, or

"(II) an amount equal to—

"(aa) 25 percent of any past-due benefits, or

"(bb) 25 percent of any past-due benefits plus any interim benefits, as defined under section 223(h), or

"(cc) 25 percent of any interim benefits, or

"(dd) in the absence of past-due benefits or interim benefits, the lesser of 300 per cent of the basic monthly benefit amount or the monthly benefit amount.

For purposes of the preceding sentence, any benefit amount shall be determined without regard to sections 224 and 1127(a). The Secretary, in his discretion, may increase periodically the amount under subclause (I).

"(3)(A) Upon a written request to the Secretary by—

"(i) the claimant, or the administrative law judge or other decision maker to reduce the amount otherwise recoverable by the attorney or other representative under paragraph (2) based on allegations of the failure of the attorney or representative to adequately represent the claimant's interests, or

"(ii) the attorney or representative to increase the prescribed amount recoverable by such attorney or representative upon a finding of unreasonableness under paragraph (2)(B)(i),

the Secretary shall provide for review of such amount after reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. Such review shall be conducted in accordance with procedures that the Secretary shall prescribe by regulation.

"(B) Upon completion of the review pursuant to this paragraph, the Secretary shall affirm, modify, or disallow the amount otherwise recoverable by the attorney or the representative under paragraph (2) and shall order repayment of all or part of such amount by such attorney or representative, if necessary. If such amount is disallowed, the Secretary shall certify for payment benefits to any claimant as provided in this title without regard to paragraph (2). Any such amount as so affirmed or modified shall be considered the amount recoverable by the attorney or other representative under paragraph (2).

"(4) Any person who shall, with the intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee not authorized under this subsection, or make any agreement directly or indirectly to collect any fee in violation of the provisions for fee collection under this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.".

(b) REPRESENTATION UNDER TITLE XVI OF THE SOCIAL SECURITY ACT.—Section 1631(d) of the Social Security Act (42 U.S.C. 1383(d)) is amended to read as follows:

"(d) The provisions of—

"(1) subsections (a), (d) and (e) of section 205,

"(2) section 206(a) (other than paragraph (3)(A)(ii)), and

"(3) section 207,

shall apply with respect to this part to the same extent as such provisions apply in the case of title II.".

(c) PROTECTION OF FEES FOR ATTORNEYS AND REPRESENTATIVES FROM OFFSETTING WORKER'S COMPENSATION BENEFITS AND SSI BENEFITS.—

(1) Section 224(a) of the Social Security Act (42 U.S.C. 424a(a)) is amended by inserting before the last sentence the following new sentence: "A benefit under section 202 or 223 shall not be reduced pursuant to the preceding provisions of this paragraph to the extent that any amount of such benefit would not otherwise be available for payment in full of the amount recoverable from such benefit by an attorney or representative pursuant to section 206(a)(2)(B).".

(2) Section 1127(a) of such Act (42 U.S.C. 1320a-6 (a)) is amended by adding at the end thereof the following new sentence: "A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the amount recoverable from such benefit by an attorney or representative pursuant to section 206(a)(2)(B)".

(d) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to determinations favorable to the claimant made on or after January 1, 1990.

S. 1571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHIEF ADMINISTRATIVE LAW JUDGE.

Title VII of the Social Security Act is amended by adding at the end thereof the following new section:

"CHIEF ADMINISTRATIVE LAW JUDGE

"SEC. 712. (a) ESTABLISHMENT OF AN OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE.—(1) There is established within the Social Security Administration (hereinafter referred to as the "Administration") of the Department of Health and Human Services an Office of the Chief Administrative Law Judge (hereinafter referred to as the "Office"). The Office shall be headed by a Chief Administrative Law Judge. All functions in the Administration relating to hearings conducted in the Administration shall be under the operational control of the Chief Administrative Law Judge.

"(2) The Chief Administrative Law Judge described in paragraph (1) shall be appointed by the Secretary in accordance with the procedures under subsection (c), and shall oversee the activities of administrative law judges that conduct business in the Administration to ensure that such administrative law judges conduct hearings and any other administrative activities for the Administration in accordance with applicable laws and regulations.

"(3) To be eligible for appointment as Chief Administrative Law Judge, an individual shall have completed not less than 3 years of employment as an administrative law judge.

"(b) ESTABLISHMENT OF SOCIAL SECURITY JUDICIAL NOMINATION COMMISSION.—(1) Not more than 45 days after the date of the enactment of this section, the Secretary shall establish in the Administration a Social Security Judicial Nomination Commission (hereinafter referred to as the "Commission"). The Commission shall be comprised of the following individuals, who shall be appointed by the Secretary:

"(A) the Chairman of the Administrative Conference of the United States, or an individual representing the interests of the Administrative Conference of the United States;

"(B) the President of the American Bar Association, or an individual representing the interests of the American Bar Association; and

"(C) the President of the Federal Bar Association, or an individual representing the interests of the Federal Bar Association.

"(2) Members of the Commission shall be appointed for a term of 3 years. A vacancy on the Commission shall be filled in the same manner as in which the initial appointment was made.

"(3) Members of the Commission who are not full-time Federal employees shall, while engaging in the business of the Commission (including travel time) shall be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

"(4) While away from their homes or regular places of business on the business of the Commission, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

"(5) To the extent allowed by law, the head of each department and agency of the United States Government shall, upon the request of the Secretary, provide information, assistance, and support to assist the functions of the Commission.

"(6) The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Commission.

"(7) The Secretary shall supply such necessary office facilities, office supplies, support services, and related expenses as necessary to carry out the functions of the Commission.

"(c) PROCEDURES FOR APPOINTMENT.—(1) The Commission shall submit to the Secretary a list of 3 individuals who meet the requirements under subsection (a)(3) and whom the Commission determines to be qualified to serve as Chief Administrative Law Judge. Such list shall be submitted to the Secretary as follows:

"(A) For the initial appointment of the Chief Administrative Law Judge such list shall be submitted not more than 90 days after the date of the enactment of this section.

"(B) For an appointment to fill a vacancy that occurs before the completion of a term of the office of the Chief Administrative Law Judge, such list shall be submitted not more than 60 days after the Commission receives notice from the Secretary of such vacancy.

"(C) For an appointment upon the expiration of a term of office of the Chief Administrative Law Judge, such list shall be submitted not less than 60 days before the date of expiration of such term of office.

"(2) The Secretary may accept or reject a list submitted under paragraph (1). If the Secretary rejects such list, the Secretary shall request the Commission to submit, within a reasonable amount of time, a list of 3 additional individuals whom the Commission determines to be qualified to serve as Chief Administrative Law Judge and who meet the requirements under subsection (a)(3).

"(3) The Secretary shall appoint a Chief Administrative Law Judge from a list submitted by the Commission under this subsection.

"(4) For purposes of a reappointment of a Chief Administrative Law Judge by the Secretary, paragraphs (1), (2), and (3) of this subsection shall not apply.

"(5) The Chief Administrative Law Judge shall report directly to the Secretary, and shall serve for a term of 5 years, or until the reappointment of such Judge, or the appointment of a qualified successor.

"(6) Except as provided in paragraph (7), such Chief Administrative Law Judge shall not be removed from office by the Secretary before the completion of the term of the appointment.

"(7) The Chief Administrative Law Judge may be removed from office by the Secretary before completing the term of appointment if—

"(A) the Secretary makes a finding, with respect to the Chief Administrative Law Judge, of neglect of duty or malfeasance in conducting the duties of the office; and

"(B) the Secretary transmits such finding to the Speaker of the House and to the President pro tempore of the Senate.".

SEC. 2. ADMINISTRATIVE LAW JUDGES CONDUCTING ADMINISTRATIVE ACTIVITIES IN THE SOCIAL SECURITY ADMINISTRATION.

Notwithstanding any other provision of law, the Secretary of the Department of Health and Human Services shall make all appointments of administrative law judges that conduct hearings or other administrative activities in the Social Security Administration. Such appointments shall be made in accordance with section 3105 of title 5, United States Code. An administrative law judge who conducts a hearing in the Social Security Administration shall make a decision on the record after an opportunity for a hearing.

SEC. 3. HEARINGS RELATED TO HOSPITAL INSURANCE PROGRAM AND SUPPLEMENTARY MEDICAL INSURANCE PROGRAM.

(a) IN GENERAL.—Notwithstanding any other provision of law, with respect to the applicability of section 205 of the Social Security Act to provisions of title XI and XVIII of such Act, hearings relating to Part A or Part B of title XVIII of such Act shall be conducted by administrative law judges serving in the Social Security Administration (as the delegates of the Secretary of Health and Human Services for such purpose) under the procedures applied by the Secretary under such section.

(b) REPORT.—Not later than July 1, 1992, the Secretary of Health and Human Services and the Comptroller General of the United States shall each report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with recommendations concerning the participation of administrative law judges serving in the Social Security Administration in the hearings described in subsection (a).●

REGO II INITIATIVE TO ELIMINATE REPRESENTATIVE'S FEES PROGRAM:

EFFECT ON CLAIMANT ACCESS TO LEGAL REPRESENTATION

Q: It appears that SSA's withdrawal from the process of authorizing, withholding and paying attorney fees will restrict claimants' access to legal representation, and therefore may discourage many of them from filing claims.

A. Although we cannot assess behavior or predict how the private bar will respond to this legislative change, we would hope and expect that attorneys who have provided capable and compassionate representation for our claimants will continue to do so. We know that some attorneys devote their entire practice to Social Security representation, and we would not expect them to begin turning claimants away on the sole basis that they would not get their fees directly from SSA. In fact, there is data indicating that attorneys presently accept Supplemental Security Income cases despite the absence of any direct payment mechanism for such cases, and that these attorneys are in fact collecting their fees from the claimants. Moreover, non-attorney representatives, who do not receive direct payment of their fee from SSA, nevertheless maintain a full and active livelihood representing claimants before this Agency.

We do not believe that eliminating the withholding and direct payment provisions for attorneys will discourage claimants from filing their Social Security claims. The vast majority of Social Security claimants presently file their initial claims without assistance from representatives. Of course, as we implement our disability redesign plan, we hope to see earlier involvement by representatives in assisting claimants with the development of their claims. We believe that the proposed legislation, if it provides only for a flat maximum fee, will accomplish that objective. We also believe that the proposal will simplify the representative's fees process for claimants, who now will know up front what they will owe their representatives at the conclusion of their case.

In sum, we see the legislative proposal as shifting to the parties (i.e., representative and claimant) the freedom and responsibility to execute their own fee contracts, just as they would for other legal services, without SSA involvement. At the same time, claimants are afforded reasonable protection through retention of SSA authority to bring sanctions against representatives who charge more than the maximum allowable fee.

Q. What will SSA do to ensure claimants' access to representation?

A. Our plans are not yet finalized, but at a minimum they will include a general public information campaign to educate claimants about the scope and effect of this legislative change.

Of course, claimants would receive information in their determination notices, but additional communication could include focus groups as well as information pamphlets. Among other things, claimants would be advised of their right to negotiate the fee they would pay to their representatives, prior to entering a fee contract. They also would be reminded that a representative may charge up to, but may not exceed, the statutory maximum fee.

Q. What implications are there for mentally impaired claimants?

A. We do not anticipate that the proposed changes will have a negative impact on these claimants. SSA presently has procedures in place whereby, once a determination of mental impairment is made, the Agency routinely investigates whether the claimant is capable of handling his or her own financial affairs. If the claimant is found incapable, SSA designates a representative payee, who will receive the claimant's checks and disburse funds in the claimant's best interest. We believe that this policy adequately protects claimants against potential abuse.

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

MAY 15 1995

ALLEN GORDON
SENATOR
25TH DISTRICT

P.O. BOX 558
MORRILTON, ARKANSAS 72110

GREAT SEAL OF THE STATE OF ARKANSAS

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

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

5-5167
-6974

DRAFT

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.

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.

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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

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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

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

30-Aug-1995 11:16am

TO: Diana M. Fortuna

FROM: Molly Brostrom
Economic and Domestic Policy

SUBJECT: ssa atty's fees proposal

Diana--Ellen Seidman called me yesterday to let me know about their concerns with the SSA atty's fee proposal. attached is a copy of their comments -- as you'll see, their main argument is that this is not the time to make disability advocates upset at us.

i've talked to ellen, and let her know the basis of our ok of the LRM, and also that we're open to being convinced otherwise. i also sent her additional info that ssa has sent me (including their response to the Bazelon lttr; i'll put a copy in your box).

anyway, just to let you know that this issue is still alive...

welcome back!

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 05:32pm

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

v. Schweiker, D.C.N.Y.1983, 575 F.Supp. 590, appeal dismissed 781 F.2d 314.

Mere failure of the state Department of Public Welfare, which granted appellants interim assistance pending their reception of supplemental security income benefits, to inform appellants that they might assert their Philpott rights and resist collection of the debt by use of legal process from one specific source—the supplemental security income benefits—did not render appellants' repayment involuntary. Tunnicliff v. Com. Dept. of Public Welfare, 1978, 396 A.2d 1168, 483 Pa. 275.

14. Underlying obligation of debtor unextinguished

Under relevant provision of this section and under the United States Supreme Court's Philpott decision construing said provision, legal process cannot be used by the state to reach protected funds, i.e., benefit payments under the supplemental security income program; however, the Philpott decision does not obviate the underlying obligation of the debtor who remains liable for the debt, nor does it prohibit the use of nonlegal means to reach protected funds. Tunnicliff v. Com., Dept. of Public Welfare, 1978, 396 A.2d 1168, 483 Pa. 275.

15. Accrued payments

This section is not applicable to accrued payments. Ewing v. Gardner, C.A. Ohio 1950, 185 F.2d 781, reversed in part on other grounds 71 S.Ct. 684, 341 U.S. 321, 95 L.Ed. 968.

16. Alimony

Under Social Security Act, social security benefits may be reached by former spouse for alimony or child support, but not for property division. Kirk v. Kirk, R.I.1990. 577 A.2d 976.

Claim of wife of recipient of social security benefits, being different from claim of creditor, was unaffected by exemption set forth in this section, and use of social security check pending determination of permanent alimony was properly restrained. Brown v. Brown, 1972, 288 N.E.2d 852, 32 Ohio App.2d 139.

The exemption under this section of social security disability payments from legal process does not apply to a claim for alimony. Meadows v. Meadows, Okl.1980, 619 P.2d 598.

Provision in this section exempting social security payments from execution did not exempt funds derived from disability insurance under this chapter from execution or impoundment to pay alimony award. Huskey v. Batts, Okl. App.1974, 530 P.2d 1375.

Trial court committed clear legal error in refusing to consider whether former husband should be held in contempt for failure to pay past due alimony where, from 1979 to 1983, former husband made approximately three alimony payments, where former husband's income was substantial enough to raise a strong inference of willful disobedience in refusing to pay alimony, and where former wife's garnishment remedies might have been ineffective as former husband's income from state retirement and black lung benefits would not be subject to garnishment or execution. Simmons v. Simmons, W.Va.1985, 330 S.E.2d 325.

17. Attorney fees

This section, which immunized social security income from execution, levy, attachment, garnishment, or other legal process, did not preclude court from awarding conservator's costs and attorney's fees from estate consisting solely of such type of income. Conservation of Estate of Lambert, 1 Dist., 1983, 191 Cal.Rptr. 725, 143 C.A.3d 239.

Even if attorney who brought action against Department of Welfare asserting an attorney's lien on supplemental security income funds in hands of Department was not precluded by federal law, no attorney's lien was preserved since Treasurer of Commonwealth received no notice as to the lien claim. Kerlinsky v. Com., 1984, 459 N.E.2d 1240, 17 Mass. App. 501.

18. Bank account funds

Where Social Security Administration merely instructed bank to debit recipient's account for amount of benefits erroneously paid after his death, but bank chose to debit account of recipient's wife into which erroneous payments had been deposited, bank's action was not fairly attributable to Administration, and thus, in absence of any federal involvement, there was no violation of either wife's right to due process under U.S.C.A.Const. Amend. 5 or nonalienation provision of this section. Dockstader v. Miller, C.A.Utah 1983, 719 F.2d 327, certio-

THE FEDERAL LAWYER

August 1995

Volume 42, No. 7

Social Insecurity on the Horizon for Disabled Workers?

By Robert E. Rains

TITLES OF UNITED STATES CODE AND UNITED STATES CODE ANNOTATED

UNITED STATES CODE ANNOTATED

TITLE 42

The Public Health and Welfare

§§ 407 to 603

Comprising All Laws of a General and Permanent Nature Under Arrangement of Official Code of the Laws of the United States with Annotations from Federal and State Courts

ST. PAUL, MINN.

WEST PUBLISHING CO.

Qualifying event involving disabled; period of coverage under group health plans, see 29 USCA § 1162.
Railroad Retirement Act of 1974, individual annuity, survivor benefits, correlation with old-age, survivors, and disability insurance system, see 45 USCA § 231 et seq.
Railroad unemployment insurance, exclusion from day of unemployment or day of sickness any days for which insurance benefits under this subchapter are received, see 45 USCA § 354.
Reduction of tax refund by amount of debt, see 31 USCA § 3720A.
Report to Congress—
Impact of vocational rehabilitation services for recipients of disability payments, see 29 USCA § 762a.
Old-age, survivors and disability program by Advisory Council on Social Security, see 42 USCA § 907.
Requirements of state eligibility systems, income verification, see 42 USCA § 1320b-7.
Rules and regulations of Provider Reimbursement Review Board, see 42 USCA § 1395oo.
Serviceman's annuity to widow or widower under Survivor Benefit Plan reduced by amount of benefit entitlement under this subchapter, see 10 USCA § 1451.
Social Security account statements, mandatory provision, see 42 USCA § 1320b-13.
Social Security and tier 1 railroad retirement benefits, see 26 USCA § 86.
State plans for aid and services to needy families with children, see 42 USCA § 602.
Subpoena requirement; civil monetary penalties, see 42 USCA § 1320a-7a.
Survivor annuities, see 5 USCA § 8441 et seq.
Tax on employers, election of coverage by religious orders, see 26 USCA § 3121.
Termination of extended coverage for disability under group health plans, see 26 USCA § 4980B.
Treatment of OASDI overpayment, see 26 USCA § 6402.
Volunteers in antipoverty programs deemed United States employees for purposes of this subchapter, see 42 USCA § 5055.

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(Aug. 14, 1935, c. 531, Title II, § 207, 49 Stat. 624; Aug. 10, 1939, c. 666, Title II, § 201, 53 Stat. 1372; Apr. 20, 1983, Pub.L. 98-21, Title III, § 335(a), 97 Stat. 130.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1983 Act. Senate Report No. 98-23, House Report No. 98-25, and House Conference Report No. 98-47, see 1983 U.S.Code Cong. and Adm.News, p. 143.

Codifications

In subsec. (b), "April 20, 1983" was substituted for "the date of the enactment of this section", which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

Amendments

1983 Amendment. Subsec. (a). Pub.L. 98-21, § 335(a)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 98-21, § 335(a)(2), added subsec. (b).

1939 Amendment. Act Aug. 10, 1939 amended section generally by incorporating provisions of former section 408 of this title.

Effective Dates

1983 Act. Section 335(c) of Pub.L. 98-21 provided that: "The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [classified principally to this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983]."

1939 Act. Amendment by Act Aug. 10, 1939 effective Jan. 1, 1940, see section 201 of Act Aug. 10, 1939.

CROSS REFERENCES

Assignments of claims, see 31 USCA § 3727.
Enforcement of legal obligations to provide child support and make alimony payments, see 42 USCA § 659.
Filing of notice of claim for Black Lung Disease applicable to miner, widow, child, parent, brother, sister or dependent, see 30 USCA § 923.
Procedure for payment of benefits, prohibition on assignment of payments, see 42 USCA § 1383.
Property exempt from levy, see 26 USCA § 6334.
Social Security and tier 1 railroad retirement benefits, see 26 USCA § 86.
Taxation of social security benefits; nonresident alien individuals see 26 USCA § 871.

LIBRARY REFERENCES

Administrative Law
Assignability of benefits, see West's Federal Practice Manual § 5683.
Major federal benefits for disabled persons, see West's Federal Practice Manual § 6034.

American Digest System
Assignment of benefits, see Social Security and Public Welfare ⇐139.
Specific statutory exemptions, see Exemptions ⇐37.

Encyclopedias
Assignment of benefits, see C.J.S. Social Security and Public Welfare § 43.
Specific statutory exemptions, see C.J.S. Exemptions § 31 et seq.

Forms
Execution, matters pertaining to, see West's Federal Forms § 5501 et seq.
Garnishment, matters pertaining to, see West's Federal Forms § 5200 et seq.
Writ of attachment, see West's Federal Forms § 5184 et seq.

Law Reviews
Elderly and bankruptcy relief: Problems, protections, and realities. Daniel L. Skoler, 6 Bankr.Dev.J. 121 (1989).
Nursing homes in New Jersey: A legal prospective. Janice Chapin, 121 N.J.Law. 17 (Nov. 1987).

WESTLAW ELECTRONIC RESEARCH

Exemption cases: 163k[add key number].
Social security and public welfare cases: 356ak[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

Diana

Do you know anything about this?

Debbie

(FYI - I don't know this woman)

Suzanne I. Ahn, M.D.
Neurology
5489 Blair Road, Suite 555
Dallas, Texas 75231
Telephone 214/691-3100

September 15, 1995

The Honorable Bill Clinton
The White House
Washington, D.C.

Dear President Clinton:

I am distressed and appalled to learn of the Administration's plan to leave disabled people without legal representation in their Social Security disability claims. This is part of the Reinventing Government proposals for the Social Security Administration, and I understand this is now under review at the Office of Management and Budget.

Those lawyers who represent disabled claimants, including some of my patients, tell me that they cannot continue in this field if this provision is enacted. They point to the fee cap of $2,500, and to the elimination of the direct fee payment system. I can certainly understand their position. I would feel the same way if the checks from Medicare for services I have provided to my patients were mailed to my patients instead of directly to me, and I were told to collect my fees from my patients.

Is it important to my patients, and other disabled people, that they are able to hire a lawyer? Of course it is. Most of them have tried on their own to get their Social Security benefits. But if they have been unsuccessful, they often want legal advice and representation to appeal, and to more than one level if necessary. Keep in mind that these patients often have no other income in the family, and have enormous and growing bills for everyday living and mounting medical bills as well. Their disability claim is extremely important to them and to their families. It is not at all surprising that they frequently want to have a lawyer; I know I would.

The current system provides access for them to hire a lawyer. The Administration's REGO II system does not. If disabled people cannot hire private lawyers, and if the pending prohibition on legal services lawyers to represent them is enacted, where will they go? Many will lose their appeals, or fail to pursue them at all. Their claims for benefits, for which they have paid FICA for all their working years, will likely be denied.

How can it be that a Democratic Administration would want this result? I urge you to withdraw this anti-worker, anti-disability community proposal, which I imagine satisfies only the bureaucrats at the Social Security Administration who would be delighted to see the private bar abandon these claimants. I urge you to leave the current system alone, or if it must be changed, to make changes that the legal community finds feasible to their continuing representation of these workers.

Sincerely,

Suzanne Ahn MD

Suzanne I. Ahn, M.D.

Copy

WISCONSIN CHRONIC FATIGUE SYNDROME ASSOCIATION, INC.

Also Serving Those With Fibromyalgia Syndrome

September 14, 1995

Ms. Shirley S. Chatter
Commissioner of Social Security
901 Altmeyer Building
6401 Security Blvd.
Baltimore, MD 21235

Dear Ms. Chatter:

I am the executive director of the Wisconsin Chronic Fatigue Syndrome Association, Inc. We are a non-profit, self-help organization dedicated to providing support for CFS patients, acting as an advocate for the rights of CFS patients and promoting and encouraging research on CFS.

Many of our members are able to continue employment in the work force despite the persistent symptoms associated with CFS. However, a significant portion of our membership ultimately becomes disabled as a result of CFS. As a result, the association works with attorneys and representatives in connection with Social Security disability claims in the appropriate case.

My purpose in writing is to express opposition to the recent proposal of the Social Security Administration to change representative compensation process. As you know, the process was reformed as recently as 1990. My experience is that the current system works quite well as it attracts qualified attorneys and representatives. If there was any dissatisfaction with the current system, I believe I would have heard those complaints through the membership of our organization. As I indicate, there simply have been no complaints regarding the current system. The fees generally charged are fair given the complexity of the work. However, I am very much concerned as to how the recent proposals to change the system would impact our membership. The proposal to limit an attorney fee to $2,500 is the most troubling feature of the proposal.

P.O. Box 442, Thiensville, WI 53092. Phone: (414) 768-7560

My concern is that qualified attorneys and representatives would simply stop practicing in this area of the law if the fees were reduced. Those attorneys or representatives who remain in the field would be inclined to take only the familiar type of disability cases such as heart disease, cancer, etc. Those claims involving disabilities based upon less common illnesses would have difficulty obtaining needed representation because it would be unprofitable for the attorneys or representatives to do the additional amount of work necessary to educate themselves and the adjudicators as to the unique vocational impact of a condition such as CFS.

A part of our advocacy on behalf of CFS patients involves assisting them in finding qualified attorneys and representatives in this regard.

In summary, the current attorneys/representatives compensation structure serves the membership of our organization quite well. We would oppose the proposed changes.

Very truly yours,

Genie Gengler
Executive Director
Wisconsin CFS Association, Inc.

TRAVELERS AID SOCIETY of Rhode Island

A multi-service agency providing
A HAND UP... NOT A HAND OUT.

September 6, 1995

Congressman Jack Reed
100 Midway Place, Suite 5
Cranston, RI 02920

Dear Congressman Reed:

I am writing because we strongly oppose a proposal currently being considered by the Social Security Administration. The proposal seeks to eliminate the withholding of attorney's fees for Social Security Disability Insurance cases. This is being considered by Social Security as part of its Reinventing Government Initiative (REGO II).

Many of our disabled clients rely on Social Security Disability Benefits for their existence. In many cases, Social Security Disability Benefits are the difference between having a roof over one's head and homelessness. I believe such a proposal would be ill-advised, as it would severely curtail the ability of the disabled, many of whom are homeless, to obtain legal representation. Many poor, homeless, disabled individuals have limited education and financial resources such that their ability to retain counsel is extremely important to enable them to rightfully pursue their benefits.

As you may know, many of the low income legal services groups are slowly being dismantled or severely limited in their ability to provide assistance to needy claimants. The current proposal, if enacted, could force private attorneys to no longer be able to practice Social Security law. The effect would be more unrepresented claimants which I believe would only further result in increased time and delay to all parties in the system.

Thank you for your consideration.

Sincerely yours,

Marion F. Avarista

Marion F. Avarista
President

MFA/rmh

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

NANCY G. SHOR
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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 <u>maximum</u> fee. Currently, $2,500 is the <u>average</u> 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.